(19,009.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 358.

PABST BREWING COMPANY, APPELLANT,

vs.

G. Y. CRENSHAW AND JOHN J. DOWNEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 26, 1904.

1 In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

Be it remembered that there was filed in the office of the clerk of the circuit court of the United States for the St. Joseph division of the western district of Missouri, on the 20th day of November A. D., 1901, a bill of complaint in the following case, to-wit:

THE PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW, Inspector of Beer and Malt Liquors for the State of Missouri, and JOHN J. DOWNEY, Deputy Inspector of Beer and Malt Liquors for the State of Missouri, Defendants. } In Equity.

To the honorable the judges of the circuit court of the United States for the St. Joseph division of the western district of Missouri:

Your orator, The Pabst Brewing Company, a corporation under and by virtue of the laws of the State of Wisconsin, and having its principal place of business in Milwaukee in the State of Wisconsin, and a citizen and resident of the State of Wisconsin, the above named complainant brings this bill for and in behalf of itself and all others similarly situated, against G. Y. Crenshaw, inspector of beer and malt liquors in and for the State of Missouri, a citizen and resident of the State of Missouri, residing in the city of St. Louis, in the eastern judicial district of Missouri, and John J. Downey, deputy inspector of beer and malt liquors in and for the State of Missouri, a citizen and resident of the State of Missouri and residing at St. Joseph, within the said Saint Joseph division of said western district; and thereupon your orator complains and says:

First. Your orator states that it now is and at all times hereinafter mentioned, was, a corporation duly organized, existing and operating under and by virtue of the laws of the State of Wisconsin, and that it now is and at all times hereinafter mentioned, was, engaged in the business of manufacturing and selling beer in
2 the State of Wisconsin, and also in the business of importing into and selling in the State of Missouri, beer manufactured by it as heretofore stated; that it annually imports into and sells in the State of Missouri not less than fifteen thousand barrels of beer of thirty-one gallons each.

Second. Your orator further states, that the defendant, G. Y. Crenshaw has recently been appointed by the governor of the State of Missouri as beer inspector under and by virtue of an act of the General Assembly entitled: "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection

of beer and malt liquors manufactured and sold in this State," approved May 4th, 1899; which said act is in words and figures as follows:

"An act creating the office of inspector of beer and malt liquors of "the State, and providing for the inspection of beer and malt "liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, "as follows:

"SECTION 1. There is hereby created the office of beer inspector "which shall be filled by appointment by the governor by and with "the consent of the senate, within thirty days after the taking effect "of this act, an inspector of beer and malt products, who shall serve "for a term of four years and until his successor is duly appointed "and qualified. He shall be an expert beer brewer, and a citizen "of the United States and of this State for more than two years next "prior to his appointment. He shall give a bond in the sum of "twenty-five thousand dollars, to be approved by the governor, for "the faithful performance of the duties of his office.

"SECTION 2. Said inspector shall, with the approval of the gov-"ernor appoint such deputies as may be required to carry out the "provisions of this act, not to exceed four in number, and such cleri-"cal help as may be necessary. Said deputies shall each receive for "their services the sum of fifteen hundred dollars per annum, and "said inspector shall receive the sum of three thousand dollars per "annum, all salaries and expenses to be paid out of the sums of "money now, or that may hereafter be, appropriated for said pur-"pose.

"SECTION 3. Every person, persons or corporation who shall erect "or keep a brewery for the manufacture or brewing of beer or other "malt products within this State, for the purpose of offering the same "for sale, shall cause the same to be inspected by the said State in-"spector.

"SECTION 4. No person, persons or corporation, engaged in the "brewing or manufacture of beer or other malt liquors, shall use "any substance, material or chemical in the manufacture or brew-"ing of beer or other malt liquors, other than pure hops or pure "extract of hops, or of pure barley, malt or wholesome yeast, or "rice.

"SECTION 5. Every person, persons or corporation who shall re-"ceive for sale or offer for sale any beer or other malt liquors other "than those manufactured in this State shall, upon receipt of same, "and before offering for sale, notify the inspector, who shall be fur-"nished with a sworn affidavit, subscribed by an officer authorized "to administer oaths, from the manufacturer thereof, or other repu-"table person having actual knowledge of the composition of said "beer or other malt liquors, that no material other than pure hops or "the extract of hops, or pure barley, malt or wholesome yeast, or rice,

"was used in the manufacture of same; upon the receipt of said "affidavit, the inspector shall inspect and label the packages con- "taining said beer or malt liquors, for which services he shall receive "like fees as those imposed upon the manufacturers of beer and "malt liquors in this State.

3 "SECTION 6. The inspector appointed under this act shall "provide himself with an office, and shall record on books "kept for that purpose the names and places of business of all persons "engaged in the manufacture, brewing and sale of beer and malt "liquors. He shall keep a record of all beer or malt liquor manu- "factured, brewed or sold and the amount produced by each brewery "or manufacturer, or sold by dealer. He shall keep a record of all "fees collected and all expenditures incurred, and shall make a "full and complete report of the same to the governor upon the first "day of each year.

"SECTION 7. It shall be the duty of such inspector to cause to be "inspected all beer or other malt liquors brewed or manufactured "or sold in this State, and if he shall find that such beer or other "malt liquors has been made from pure hops or the pure extract of "hops, or of pure barley, malt or wholesome yeast, or rice, to place "upon the packages containing such beer or malt liquor his label, "certifying that the same has been inspected and made from whole- "some ingredients.

"SECTION 7*a*. It shall be the duty of the State treasurer upon the "taking effect of this act to provide suitable and inimitable State "certificates and labels for this inspection gauging and labeling, "having on each, proper places for countersigning by the State "treasurer and inspector, and shall safely keep the same together "with the plates used in making them, when not in actual use. "The State treasurer shall from time to time, upon demand, deliver "the aforesaid labels to the inspector, taking therefor his receipt and "shall charge said inspector with the same; and shall from time to time "as said inspector makes returns of moneys collected in the course "of his inspection credit said inspector's account with such sums "and shall keep a true and correct book account of his dealings "with said inspector.

"SECTION 7*b*. It shall be unlawful for any person to attempt to "make or make, to attempt to sell or sell, to attempt — use or use "any of the certificates or labels or both provided for by this act, or "imitation thereof, except such persons as by law are allowed to "make, sell and use the same, and any person so offending shall be "deemed guilty of a felony and, upon conviction, be punished by "imprisonment in the penitentiary for a term not to exceed five "years.

"SECTION 8. The inspector shall be entitled to receive for inspect- "ing and gauging one cent for each gallon contained in each pack- "age, and two cents for labeling each package. All fees received "by the inspector shall be paid into the State treasury. The word "package as used in this act shall be construed to mean any vessel

"of any kind other than pint and quart bottles in which any beer "or malt liquor may be placed for sale, containing eight gallons or "less; when said beer or malt liquors are placed in pint or quart "bottles, a package as used in this act, shall be construed to mean "not to exceed 48 pint bottles or 24 quart bottles of beer or malt "liquors, which, when manufactured and so bottled must, before "sale be placed in suitable cases containing said number and size "of bottles, for inspection and stamping by said State inspectors; "and when said beer or malt liquors shall be placed in vessels con- "taining more than eight gallons, the word package shall be con- "strued to mean each eight gallons or fractional part thereof so "contained in said vessel.

"SECTION 9. The expense of said office including the salaries of "the inspector and his deputies, shall be paid monthly out of the "amount appropriated by law from *from* the general revenue fund "on warrants drawn by the State auditor on vouchers approved by "the inspector, and all fees received by the inspector under the pro- "visions of this act shall on or before the last day of each month, be "paid into the State treasury by said inspector, and shall be placed "to the credit of the general revenue fund.

"SECTION 10. Any person who shall sell any beer or malt liquor "within this State which has not been inspected according to the "provisions of this act, or contained in packages which shall not "have upon them the certificate of the State inspector, or any person "— shall fail to destroy said certificate or label after the contents "of said package are disposed of, shall be deemed guilty of a misde- "meanor, and upon conviction thereof, shall be punished by a fine "not exceeding five hundred dollars, or by imprisonment in the "county jail for a period of not less than six months, and in addi- "tion thereto shall have his license or other authority, giving him "the right to manufacture or sell said liquors in this State, revoked, "and shall not again receive any such license or other authority for "a period of two years thereafter.

"SECTION 11. If any inspector shall fail to perform any of
4 "the duties imposed upon him by this act, or shall in any "manner violate the provisions thereof, he shall be deemed "guilty of a misdemeanor, and upon conviction thereof, shall be "punished by imprisonment in the county jail for not less than "thirty days and a fine not exceeding one thousand dollars, and if "any such inspector shall fail to faithfully performed the duties en- "joined upon him by this act he may be removed from office by the "governor.

"SECTION 12. All prosecutions for fines and penalties under the "provisions of this act shall be either by indictment od informa- "tion in any court of competent jurisdiction, and when collected "shall be paid one-fourth to the informer and three-fourth- into the "fund for the construction of public roads and highways in the "county in which said offence may have been committed and prose- "cution begun.

"SECTION 13. All beer or other malt liquors manufactured in "this State and exported outside of this State for sale, shall be in- "spected as other liquors designated in this act, but said inspection "shall be free of cost to the manufacturer.

"SECTION 13*a*. Every railroad, express or transportation company, "shall when requested, furnish to the inspector a duplicate bill of "lading or receipt, showing the name of the consignor and consignee, "date, place received, destination and quality of beer or malt liquors "received by them for shipment to any point within this State. "Upon failure to comply with the provisions herein, said railroad, "express or transportation company shall forfeit or pay to the State "of Missouri the sum of fifty dollars for each and every failure to be "recovered in any court of competent jurisdiction. The inspector "herein provided for, is hereby authorized and impowered to sue in "his own name at the relation and to the use of the State. The "penalties collected shall be paid into the State treasury.

"SECTION 14. There is hereby appropriated out of the State treas- "ury, charg-able to the general revenue fund, for the year 1899 and "1900, for the payment of the inspector, six thousand dollars; for "the pay of four deputies, twelve thousand dollars; for rent, station- "ery, fuel, printing and such other things as may be necessary for "the transaction of the business of said inspector, the sum of six "thousand dollars.

"Approved May 4, 1899."

Third. Your orator further states that the said defendant, G. Y. Crenshaw has duly qualified under the terms of said act of the General Assembly and that the defendant John J. Downey has by the said G. Y. Crenshaw, with the approval of the governor of the State of Missouri, been appointed deputy inspector of beer and malt liquors of the State of Missouri, and has duly qualified as such deputy inspector and that said defendants claim to be entitled to act as such beer inspector and deputy beer inspector, and entitled to discharge the duties of said respective offices, and claim to be entitled to enforce and carry out the provisions of said act of the General Assembly, and to that end have publicly stated and announced their intention of enforcing the provisions of said act.

Fourth. Your orator further states that there are persons, firms and corporations engaged in the manufacture and sale of beer in the State of Missouri, as follows: The American Brewing Company, the Anheuser-Busch Brewing Association, the Columbia Brewing Company, the Consumers Brewing Company, the Home Brewing Company, the National Brewing Company, Louis Ebert, the St. Louis Brewing Association, and the Wm. J. Lemp Brewing Com-
5 pany, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlbach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Jester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the

Springfield Brewing Company, John B. Busch, the Weston Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Casper Ludwig.

That the persons, firms and corporations last hereinbefore named manufacture annually not less than 2.250.000 barrels of beer of 31 gallons each; of which amount they sell in the State of Missouri not less than 1.275.000 barrels of 31 gallons each, and outside of the State of Missouri not less than 975.000 barrels of 31 gallons each. That of the persons, firms and corporations last hereinbefore named twelve sell their entire product in the State of Missouri; and that a majority of the remainder sell the largest portion of their product in the State of Missouri; but that one of the said parties sells more than two-thirds of its product and another of said parties sells about four-fifths of its product outside of the State of Missouri; and that a third of said parties sells more than one-half of its product outside of the State of Missouri; that with the exception of the three companies last referred to, all the brewers manufacturing in the State of Missouri sell either all or the greater portion of the product in the State of Missouri.

That in addition to the plaintiff herein, and the persons, firms and corporations hereinbefore mentioned as manufacturing and selling beer in the State of Missouri, there are persons, firms and corporations engaged in manufacturing beer in other States, and particularly in the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri not less than one hundred and sixty-five thousand barrels of 31 gallons each. That in addition there are large quantities of ale imported from other States in the Union.

That in addition to the foregoing there is imported into the State of Missouri by various persons, firms and corporations engaged in the sale of beer, large quantities of beer from foreign countries, and especially beer from Germany and ale from England, and that the aggregate of beer and ale imported from other States of the Union and sold in this State, amounts in the aggregate to an annual importation and sale of about 1500 barrels of 31 gallons each.

That there are engaged in the manufacture of beer known
6 as "weiss bier" the following firms, persons and corporations:—

At St. Louis in the State of Missouri;—

The St. Louis Weiss Bier Brewing Company, Schrader-Berlina Valena Company, Strecher & Thomas, Witteman-Rost Brewing Company, American Weiss Biel Company, Berliner Imported Weiss Bier Company, and Columbia Weiss Bier Company.

At Kansas City, Missouri:—

W. L. Schnick, P. Seltzer & Sons, Bremer & Thoma.

That about 5200 barrels of weiss bier are sold in the State of Missouri annually, of which about 4000 barrels are sold in Missouri and 1200 barrels are exported.

Fifth. Your orator further states that weiss bier is a malted and

fermented liquor brewed from wheat and has always been so brewed and cannot be made from any other cereal. That lager beer is made commonly of hops and malted barley and of barley, rye, corn and other farinaceous cereal which it may be convenient for the brewer to use, and it may be properly made of any farinaceous cereal used in conjunction with hops and malt in the production of lager beer, and such cereals when so used, are entirely wholesome. That beer, whether weiss bier or lager beer, and whatever cereals may be used in its manufacture, must for the purpose of sale, be enclosed in tight packages of glass or of wood, and when so prepared for sale by enclosure in such tight packages, the packages cannot be opened without injury to the contents and are never opened except for the purpose of immediate consumption; that to open the same prior to the consumption thereof is to render the beer stale, flat, unpalitable and sour. Your orator further states that the said act of May 4th, 1899, prohibits the use of wholesome articles in the manufacture of beer, such as corn and wheat, notwithstanding that these articles have for many years been used in the manufacture of beer and are recognized and admitted to be wholesome; and your orator states that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps is five dollars ($5.00) per barrel of 31 gallons.

Sixth. Your orator further states that the said act of May 4th, 1899, contained a revenue measure in this, that the said inspection fee authorized by the said act to be charged on account of the inspection of beer and malt liquors is in effect a tax. That the entire expense of the inspection, as provided by the act itself, amounts to twelve thousand dollars ($12.000) a year, while the inspection
7 fees of the beer annually sold in the State of Missouri as hereinbefore set forth amount to not less than five hundred and fifty thousand dollars ($550.000) an excess of more — five hundred thousand dollars ($500.000) above the cost of inspection, which excess of five hundred thousand dollars is, by the terms of the act and by its necessary operation and effect, a specific tax upon beer sold in the State of Missouri and is levied for the purpose and is required by the act to be turned into the general revenues of the State for the uses of such general revenue; and your orator further states that said bill, as introduced into the senate of the State of Missouri, was recognize by its framer to be a revenue bill and was entitled, when the same was introduced, "An act creating the office of inspector of beer and malt liquors and providing for an increase in the general revenue of the State," and that the said bill was treated throughout as a revenue measure and was supported as such by those who defended and voted for it in the senate and in the house of representatives of the Missouri General Assembly.

That the taxes imposed under and by virtue of the said act *is* in addition to the tax already paid by your orator and persons similarly situated on the product sold in the State of Missouri, and that the said — is imposed solely upon the manufacturers and vendors of

beer and not upon the manufacturers and vendors of other products of consumption.

Seventh. Your orator further states that it is advised and does believe and so charges, that the said act of the General Assembly, of May 4th, 1899, hereinbefore fully set out, is unconstitutional, inoperative and void, and that it is against the common rights and of no binding force, validity or effect so far as your orator and all others similarly situated are concerned, for the following reasons, to wit:

1st. Because the said act of May 4th, 1899, is violative of section one of the fourteenth article of amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privilege- or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and also violative of section two of article four of said Constitution of the United States, which provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. Your orator states that said act of May 4th, 1899, violates said provisions of the Constitution of the United States in this, that said act provides that no person or corpora-

8 tion engaged in brewing or the manufacture of beer or other malt liquors shall use any substance or material in the manufacture or brewing of beer or other malt liquors, other than those mentioned in section four of said act, and thereby imposes an unreasonable and unconstitutional restraint upon a lawful occupation and upon an occupation which your orator has been expressly authorized to engage in and which every citizen of the United States has a right to engage in. Your orator represents that there are wholesome or harmless ingredients other than those specified in said section four which may be properly used in the manufacture of beer and that corn, wheat, rye and other farinaceous cereals, which have for many years been used in the manufacture of beer, and which are prohibited by the said act in the manufacture of beer, are wholesome and are properly used in the manufacture of beer and other malt liquors and that weiss bier cannot be made at all without the use of wheat. Your orator further states that the said act of May 4th, 1899, is an unwarranted, arbitrary and oppressive exercise of Government interference in a lawful occupation of a portion of the citizens of the United States and that the limitations and restrictions contained in said act are in violation of the rights secured to the people of the United States by the provisions of the Federal Constitution above referred to, and are also against common rights, independent of any constitutional provision.

Your orator further states that the said act of May 4th, 1899, violates the above provisions of said fourteenth amendment to the Constitution of the United States in this, that said act arbitrarily selects the finished product of the manufacturer of beer and malt

liquors and imposed upon such product a tax *over* and greater than is imposed upon the finished product of any other manufacturer in the State of Missouri, or upon the property of any other person or class of persons in the State, that by reason of said arbitrary, unjust and unreasonable discrimination and class legislation, said act denies the manufacturers of beer and malt liquors equality before the law and deprives them of the protection of equal laws to which they are entitled. Your orator further states that the said act violates the above provisions of the said fourteenth amendment to the Constitution of the United States, in this, that it requires your orator and other manufacturers of beer, not resident in the State of Missouri, but importing into the State for sale therein its finished product, to pay a tax on said product other and greater than is imposed upon the finished product of any other manufacturers not resident in the State of Missouri, but who import into and
9 sell in the State of Missouri their finished product.

Your orator further states that said act discriminates between the manufacturers of beer and malt liquors resident in the State of Missouri, in this, that the brewer who manufactures for sale within the State of Missouri is taxed thirty-nine cents (39c.) per barrel upon the product sold in the State, whilst the brewer who exports his product from the State is exempt from such taxation.

Your orator further states that the said act of May 4th, 1899, violates the provisions of the fourteenth amendment to the Constitution of the United States in this, that said act declares that any violation of the same, shall be a misdemeanor, and then provides further that such misdemeanor shall be punished by fine or imprisonment, or both, and in addition thereto the offender shall have his license or other authority, giving him the right to manufacture or sell beer or malt liquors in the State, revoked, and shall not again receive any such license or other authority for a period of two years thereafter; that the punishment for a violation of said act, as fixed in the act, is cruel and unusual, inasmuch as it provides for a different kind of punishment for the particular misdemeanor created and defined by the act from the punishment which is usual and customary punishment in the State of Missouri for misdemeanors, namely, fine and imprisonment, or both; that is to say, a misdemeanor when committed by a brewer shall be punished in a manner different in kind than is proscribed for the punishment of others guilty of misdemeanors.

Eighth. Your orator further states that the said act of May 4th, 1899, is repugnant to the provisions of the Constitution of the United States concerning the regulation of inter-state commerce, being section eight of article one of said Constitution, as well as section two of article four of said Constitution, declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States, and to the second clause of section ten of article one of said Constitution, which provides that no State shall, without the consent of Congress, lay any imposts or duties upon im-

ports or exports except what shall be absolutely necessary for executing its inspection laws, and is also repugnant to section one, of the fourteenth amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of any citizens of the United States, nor shall any State deprive any person of life, liberty of property without due process of law or deny to any person within its jurisdiction the equal protection of the law." Your orator states that the said act of May 4th, 1899, violates the above provisions of the Constitution of the United States in this, that it requires all beer and malt liquors imported into the State of Missouri from other States and Territories or foreign countries, while still in the original packages and before being offered for sale, to be inspected and labeled and said tax of one cent per gallon and two cents per package thereon be paid, and also to be accompanied by an affidavit from the manufacturer or other reputable person having actual knowledge thereof, that no material- other than specified in said act were used in the manufacture of said beer or malt liquor, and also that the person or corporation receiving beer or malt liquors for sale from other States and Territories or foreign countries shall, before offering the same for sale, submit the same for inspection as aforesaid and procure from said inspector a certificate that such beer or malt liquor has been made exclusively of the ingredients specified in said act; all of which your orator states is in violation of the provisions of the Constitution of the United States hereinbefore set forth.

Your orator further states, that it is engaged in the manufacture of beer in the State of Wisconsin and in the sale of its manufactured product in the States of Wisconsin and Missouri and other States of the Union; that its principal place of business is situated in the city of Milwaukee in the State of Wisconsin; that for many years last past it has owned and managed and still owns and manages in the city of Kansas City, Missouri, a depot or agency in which, during all of said time, it has been continuously storing and depositing the product of its manufactory. That in due and ordinary course of its business at frequent intervals it ships from its manufactory aforesaid, to its depot in the city of Kansas City, aforesaid, beer in barrels, kegs and bottles, which are placed and kept in its said depot until the same are removed therefrom and delivered to its customers in the State of Missouri and elsewhere. That it has no brewery or plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri, consists solely on its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes it from said depot and delivers it in original packages to its customers; that none of the product sold by your orator is manufactured or brewed in the State of Missouri, but that all its product which is stored or handled in the State of Missouri is manufactured in the State of Wisconsin, and is there put into

barrels, kegs and bottles, and when thus put up it is shipped
11 to and stored in its depot in the city of Kansas City,
as originally put up and the same is thereafter removed therefrom and delivered to its customers in the same original packages; that in order for it to transport its product from the State of Wisconsin to the city of Kansas City and introduce the same in the State of Missouri, it is necessary to have in said State a depot or agency in which to store its product so shipped so that it may be thereafter removed therefrom and delivered to its customers; that its depot or agency is used as a place of storage and for no other purpose whatever, and in transporting its product from the State of Wisconsin to the State of Missouri and introducing the same therein, in order to preserve its said product fit and proper for consumption, it is necessary for it to have such depot or agency in which to keep said product. That it has for many years past conducted its business as aforesaid and it desires and intends to so conduct its business in the future.

That the purpose of its said depot and agency in said Kansas City, Missouri, it owns and maintains large ware houses and storage houses especially constructed for its said business, and which would be of little or no value for any other business, all of great value, to wit of the value of $50,000.00; and owns and uses a large number of horses and wagons and other property of great value to wit; of the value of $100,000.00; and has built up and enjoys a large and well established trade and business from its said depot and agency in Kansas City, Missouri, which yields it a large revenue and profit, to wit; annual profits to the amount of $20,000.

And your orator states that unless the relief herein prayed for is granted, your orator's said property will be rendered wholly worthless and of no value, and its said business will be wholly destroyed and its income and profits lost to it.

Your orator states that the act providing for the inspection fees, are further a violation of the provisions of the Constitution above set forth in this, to wit: that all the beer stored in the depot or agency belonging to your orator is imported from another State, as aforesaid, to wit; the State of Wisconsin, in original packages, and that while the State has the right to enact a police regulation in reference to the beer so imported, it has no right to impose an inspection fee which shall go into the revenues of the State and thereby become a revenue regulation, under the guise of enforcing the police powers of the State, tax the finished product of your
orator thus imported from the State of Wisconsin into the
12 State of Missouri for general revenue purposes and that said
act is purely a revenue bill and not a police regulation, and that the power to levy taxes for revenue purposes is distinct from the police power.

The defendants pretending to act as beer inspector and deputy beer inspector respectively, have instituted and caused to be instituted in the State of Missouri a large number of criminal prosecu-

tions to wit: about nine thousand criminal prosecutions for alleged violation of said act, and have threatened, and are about to, unless the relief herein prayed for be granted, and will, institute prosecutions against your orator and its customers in the State of Missouri, and other persons, firms and corporations similarly situated, all of which will produce irreparable injury and damage unto your orator and others similarly situated and for which it will have no adequate remedy at law.

Your orator further states that the enforcement of said act of the General Assembly of May 4th 1899, would, for reasons hereinabove stated, cause irreparable damage to the business of your orator and all other persons similarly situated in the State of Missouri. That the number of persons engaged in the brewing and sale of malt liquors, and who are affected by the terms of said act, is large, and that this action is brought by your orator for itself and on behalf of all persons similarly situated, in order to avoid a multiplicity of suits and to prevent irreparable damage to the property and business of each of them.

Your orator further shows that besides the irreparable damage which will be inflicted upon its property and business by the inspection of beer as hereinbefore more fully set out, the act in question provides for heavy fines and penalties and imprisonment of all brewers who fail to conform to its provisions and who sell their product without submitting the same to such inspection and who fail to pay the unconstitutional tax imposed by said act, and said act provides that a prosecution and conviction for failure to comply with the terms of said act and of the payment of the tax shall be followed by the forfeiture of the brewer's right to manufacture and sell beer and other malt liquors in the State for a period of two years thereafter, which would cause ruinous damage to plaintiff's business and that of others similarly situated, in which large capital is invested, and in which many thousand persons are employed.

13 Your orator further states that by reason of the facts hereinbefore set out, it is without adequate remedy at law, and that it now comes into a court of equity and prays for relief under the facts and circumstances herein stated, and your orator further states that unless the relief hereinafter prayed for is granted the damage to your orator and all others similarly situated will be irreparable and a multiplicity of suits will result.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendant may answer the premises but not upon oath or affirmance, the benefit whereof is expressly waived by your orator, it now prays the court that an order of injunction may issue out of this court directed to the defendant, the said G. Y. Crenshaw, claiming to be the inspector of beer and other malt liquors in the State of Missouri, and to the defendant John J. Downey claiming to be the deputy inspector of beer and other malt liquors in the State of Missouri, enjoining and restraining them, their deputies, agents and servants, and each of

them, from enforcing or attempting to enforce said act of the General Assembly of May 4th, 1899, and from inspecting or attempting to inspect the beer or other malt liquors manufactured or offered for sale by your orator or others similarly situated, and from collecting or attempting to collect any tax or inspection fee under said act and from attempting to enforce said act as against any customer of your orator and others similarly situated, and your orator further prays that the said act of the General Assembly of the State of Missouri, be declared null and void, and for such other and further relief in the premises as the nature of the circumstances of the case may require, and may it please your honors to grant to your orator a writ of subpœna, to be directed to the said G. Y. Crenshaw and John J. Downey, thereby commanding them at a certain time and under a certain penalty therein to be named, personally to appear before this honorable court, and then and there *offer* true, direct and perfect answer to make to all and singular the premises, and to stand —, perform and abide by such order, direction and decree as may be made against them in the premises, as shall — meet and agreeable to equity. And your orator will ever pray.

HARKLESS, O'GRADY & CRYSLER,
Att'ys for Complainant.

On said bill of complaint subpœnas were issued as prayed for, in words and figures to-wit:—

14 *Subpœna.*

(Original.)

ST. JOSEPH DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States to G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, and John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the St. Joseph division of the western district of Missouri, on the first Monday of January next, at the city of St. Joseph, then and there to answer the bill of complaint of the Pabst Brewing Company, a corporation, citizen of the State of Wisconsin, filed against you on the 20th day of November 1901. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of November A. D. 1901.

[L. S.] Issued at office in the city of St. Joseph Mo., under the seal of said circuit court, the day and year last aforesaid.

CALVIN C. COLT, *Clerk.*

MEM.—The defendant- to enter — appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*.

CALVIN C. COLT, *Clerk*.

[Endorsed:] No. 235 United States circuit court western district of Missouri, St. Joseph division The Pabst Brewing Company vs. G. Y. Crenshaw *et al.* Subpœna in chancery (original) Returnable to January rules, 1902. Returned to the clerk's office and filed this 21st day of November A. D. 1901 Calvin C. Colt clerk.

UNITED STATES OF AMERICA,
St. Joseph Division of the Western District of Missouri, } *sct:*

I do certify that I executed this writ by delivering a true copy of the same to the within named John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri. Done at St. Joseph, Mo. this 21st day of November, 1901.

E. R. DURHAM,
U. S. Marshal, Western District of Missouri,
By J. H. GRAHAM, *Deputy*.

Marshal's Fees.

Service	$2.00
Car fare miles travel	20
Total	$2.20

15 *Subpœna.*

(Original.)

ST. JOSEPH DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States to G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, and John J. Downey, deputy inspector of beer and malt liquors for the State of Missouri, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the St. Joseph division of the western district of Missouri, on the first Monday of January next, at the city of St. Joseph, then and there to answer the bill of complaint of the Pabst Brewing Company, a corporation, citizen of the State of Wisconsin, filed against you on the 20th day of November 1901. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of November A. D. 1901.

[L. S.] Issued at office in the city of St. Joseph, Mo., under the seal of said circuit court, the day and year last aforesaid.

CALVIN C. COLT, *Clerk.*

MEM.—The defendant to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

CALVIN C. COLT, *Clerk.*

Kansas City, Mo., Nov. 21st, 1901.

We hereby certify that the above and foregoing is a duplicate of the original writ sued out of the circuit court of the United States for the Saint Joseph division of the western district of Missouri in the cause wherein The Pabst Brewing Company is complainant and G. Y. Crenshaw *et al.* are defendants.

HARKLESS, O'GRADY & CRYSLER,
Attorneys for Complainant.

[Endorsed:] No. 235. United States circuit court western district of Missouri, St. Joseph division The Pabst Brewing Company *vs.* G. Y. Crenshaw *et al.* Subpœna in chancery Duplicate original Returnable to January rules, 1902 Returned to the clerk's office and filed this 25th day of November A. D. 1901 Calvin C. Colt clerk.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

I do certify that I executed this writ by delivering a true copy thereof as certified by the clerk to the within named defendant G. Y. Crenshaw, inspector of beer and malt liquors for the State of Missouri, at the city of St. Louis, in the eastern judicial district of Missouri, this 22nd day of November, 1901.

LOUIS C. BOHLE,
U. S. Marshal, Western District of Missouri,
By W. W. NALL, *Deputy.*

Marshal's Fees.

Service	$2.00
Miles travel	.06
Total	$2.06

16 And afterwards, to wit, on the 2nd day of January A. D. 1902 the said defendants, G. Y. Crenshaw and John J. Downey, come into the clerk's office of said court and enter their appearance.

And afterwards to wit, on the 1st day of February, 1902 the defendants file in the clerk's office of said court their demurrer to plaintiff's bill, which said demurrer is in figures and words as follows:

In the Circuit Court of the United States for the Saint Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW, Inspector of Beer and Malt Liquors for the State of Missouri, and John J. Downey, Deputy Inspector of Beer and Malt Liquors for the State of Missouri, Defendants. } In Equity.

The Demurrer of the Above Named G. Y. Crenshaw and John J. Downey to the bill of Complaint of the Above Named Plaintiff.

These defendants, by their protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint contained to be true in such manner and form as the same are therein set forth and *and* alleged, do demur to said bill, and for cause of demurrer show that there is no equity in the bill; that said complainant has not by its said bill, made such a case as entitles it in a court of equity, to the relief prayed or any relief against these defendants.

And for further and more specific grounds of demurrer these defendants aver as follows:

(1.) That the act of the General Assembly of the State of Missouri, approved May 4th, 1899, set out in the complainant's bill, does not violate any of the provisions of the Constitution of the United States, and is a valid enactment, and it appears, as a matter of law upon the face of the bill, that complainant is not entitled to prevent the enforcement of said statute.

(2.) That it apears upon the face of complainant's bill that the only — in which its interests are affected by the act of May 4th, 1899, referred to therein, is that an inspection fee is charged for all beer sold in the State of Missouri, and, as a matter of law, it is competent and within the power of the State to make such exaction for the privilege of selling beer in said State. It is not alleged in the bill that complainant is making beer out of any of the materials or sub-

stances prohibited by said act, nor is it charged therein that
17 complainant belongs to any of the classes alleged to be discriminated against by said statute, and said complainant is not in a position to challenge the constitutionality of said act in those particulars referred to, in as much as its rights or interests are not affected by said provisions.

(3.) That plaintiff has an adequate remedy at law.

(4.) That a court of equity has no jurisdiction to enjoin criminal prosecutions.

Wherefore, and for divers other good causes of demurrer on the said bill, these defendants do demur thereto. And they pray the judgment of this honorable court whether they shall be compelled to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

EDWIN C. CROW,
Attorney General of Mo.,
W. M. WILLIAMS,
Solicitors for Defendants.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

EDWIN C. CROW,
W. M. WILLIAMS,
Of Counsel for Defendants.

STATE OF MISSOURI, } ss:
City of St. Louis, }

G. Y. Crenshaw being duly sworn upon his oath, deposes and says: I am one of the above named defendants. The foregoing demurrer is not interposed for delay.

G. Y. CRENSHAW.

Subscribed and sworn before me this 30th day of January, 1902.

[L. S.] THOS. W. CORLEY,
Notary Public, City of St. Louis.

My term expires Feb. 23/1904.

And afterwards to wit, on the 18th day of November A. D., 1902 the complainants herein file- with the clerk of this court a petition for order to file amended bill of complaint, and which said petition is in words and figures as follows:

In the Circuit Court of the United States for the State of
18 Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Petition for Order to File Amended Bill of Complaint.

Now comes the complainant after the filing of a demurrer and before replication and prays the court for an order granting it leave and permission to file herein its amended bill of complaint on or before the next succeeding rule day, to-wit, the first Monday of December, 1902, and without payment of costs.

HARKLESS, O'GRADY & CRYSLER,
Solicitors for Complainant.

And upon said petition the court made the following order, to-wit:

Order.

It is hereby ordered this 18th day of November, 1902, that complainant have permission to file in this cause its amended bill of complaint on or before the next succeeding rule day, to-wit: the first Monday in December, 1902, without payment of costs, a copy of such amended bill of complaint to be — complainant delivered to defendants or their solicitors.

JOHN F. PHILIPS, *Judge.*

And afterwards to-wit, on the 19th day of November A. D., 1902 the complainant in this cause filed with the clerk of this court its amended petition, which amended petition is in words and figures as follows to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.
} In Equity.

To the honorable the judges of the circuit court of the United States for the western district of the State of Missouri, St.
19 Joseph division:

Your orator, The Pabst Brewing Company, the above named complainant, being by leave of court permitted to amend its bill herein,

brings this its amended bill against G. Y. Crenshaw and John J. Downey, defendants above named, and complaining says:

First. That your orator is and at all times hereinafter mentioned was, a corporation duly incorporated and doing business under and by virtue of the laws of the State of Wisconsin, is a citizen of the State of Wisconsin and domiciled therein, and having its principal place of business in the city of Milwaukee in said State:

That the defendant, G. Y. Crenshaw, is a citizen of the State of Missouri, resident of the city of St. Louis, in said State; and the defendant John J. Downey, is a citizen of said State of Missouri, resident at the city of St. Joseph, in said State, and within the St. Joseph division of said western district.

Second. That the business of vending and dealing in beer and other malt liquors, now is, and at all times hereinafter mentioned was, in the State of Missouri, and by the laws of the said State, recognized as legitimate trade and commerce, and the manufacture and sale of beer and other malt liquors, and the importation into said State of beer and other malt liquors and the sale of the beer and other malt liquors so imported and the exporta-ion from the State of liquors imported into and thereafter sold within and exported from said State, is, and was, as aforesaid, permitted in, and authorized by, the laws of said State, and was, and is, recognized as a legitimate and lawful trade or calling.

Third. That your orator is, and at all times hereinafter mentioned was, engaged in the business of brewing, manufacturing and selling beer in the State of Wisconsin; and also in the business of importing into and selling in the State of Missouri and other States of the United States, beer manufactured by it in the State of Wisconsin; that your orator manufactures in the said State of Wisconsin, ten different kinds or grades of beer and malt liquors, each kind or grade being seperately made or manufactured and requiring special treatment; that it annually imports into and sells in the State of Missouri, not less than fifteen thousand barrels of beer and other malt liquors, of thirty-one gallons to the barrel, of the aggregate value of not less than one hundred thousand dollars; that such imports consist of every kind and grade of beer and other malt liquors so manufactured by your orator.

Fourth. Your orator further informs your honors that heretofore, to-wit: at the regular A. D., 1899 session of the General Assembly of the State of Missouri, under the pretense of regulating the trade in beer and other malt liquors, but in reality for the purpose of increasing the general revenue of the State, there was considered and passed a certain measure or enactment purporting to be an enactment, into a valid law of the State of Missouri, of certain provisions concerning the manufacture and sale of beer in the State of Missouri, under the title and in specific words and figures, as follows:

"*Inspection—Beer.*

An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in the State.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate, within thirty days after the taking effect of this act, an inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SEC. 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall receive for their services the sum of fifteen hundred dollars per annum, and said inspector shall receive the sum of three thousand dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SEC. 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering
21 the same for sale, shall cause the same to be inspected by the said State inspector.

SEC. 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or of pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State, shall, upon receipt of same, and before offering — sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice was used in the manufacture of the same; upon the receipt of said affidavit, the inspector shall inspect and label the packages — said beer or malt liquors, for which services he shall receive like fees as thos-

imposed upon the manufacturers of beer and malt liquors in this State.

SEC. 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewery or manufacturer, or sold by dealer. He shall keep a record of all fees collected and of all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SEC. 7. It shall be the duty of such inspector to cause to be inspected all beer or other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or malt liquor has — made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing such beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SEC. 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labeling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking therefor his receipt, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SEC. 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SEC. 8. The inspector shall be entitled to receive for inspecting and guaging one cent for each gallon contained in each package, and two cents for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be

placed in suitable cases containing said number and size of bottles, for inspection and stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SEC. 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by *alw* from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under the provisions of
22 this act shall, on or before the last day of each month, be paid into the State treasury by said inspector and shall be placed to the credit of the general revenue fund.

SEC. 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SEC. 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SEC. 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and prosecution begun.

SEC. 13. All beer or other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SEC. 13a. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri, the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SEC. 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing and such other things as may be necessary for the transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4th, 1899."

which said alleged act of assembly thereafter and on the 4th day of May, A. D., 1899, was duly approved and thereafter the same was published in the manner by law provided for approval and publication of acts of said General Assembly.

Fifth. That thereafter the defendant G. Y. Crenshaw was, by the governor of the State of Missouri, appointed to an office of said State under the title "Inspector of beer and malt liquors." That such appointment was made and such office alleged to exist, under pretense that the establishment of such office and the making of such appointment was lawfully provided for by said act of assembly, and the defendant, John J. Downey, thereafter was, under pretense that such appointment was lawfully authorized by said act of assembly, by said G. Y. Crenshaw, with the approval of the
23 governor of the State of Missouri, appointed deputy inspector of beer and malt liquors of the State of Missouri; that said defendants duly qualified as was required of such officers by the terms of said enactment, and they now claim to be entitled to act as such inspector and deputy inspector, and entitled to discharge the duties of said respective offices, and claim to be authorized and entitled to enforce and effectuate the provisions of said enactment of the General Assembly, and under pretense of so doing, have publicly stated and announced their intention of enforcing the provisions of said enactment and are enforcing and threaten to continue to enforce the provisions thereof against your orator to the grievous and continued injury of your orator in its said business.

Sixth. Your orator further states that there are persons, firms and corporations engaged in the manufacture and sale of beer in the State of Missouri, as follows: The American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Association, the Columbia Brewing Company, the National Brewing Company, Louis Ebert, the St. Louis Brewing Association and the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company,

G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Jester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Weston Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig.

That the persons, firms and corporations last heretofore named, manufacture annually within the State of Missouri, not less than 2,250,000 barrels of beer of 31 gallons each; of the aggregate value of not less than $12,250,000.00 of which amount they sell in the State of Missouri not less than 1,275,000 barrels of 31 gallons each of the aggregate value of not less than $6,375,000.00.

Seventh. That in addition to the plaintiffs herein, and the persons, firms and corporations hereinbefore mentioned as manufacturing and selling beer in the State of Missouri, there are persons, firms and corporations engaged in manufacturing beer in other States, and particularly in the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer
24 manufactured in said States, not less than one hundred and sixty-five thousand barrels of 31 gallons each of the aggregate value of $10,725,000.00. That in addition there are large quantities of ale imported into the State of Missouri from other States in the Union.

That in addition to the foregoing there *is* imported into the State of Missouri by various persons, firms and corporations engaged in the sale of beer, large quantities of beer from foreign countries, manufactured in foreign countries and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported from foreign countries manufactured in foreign countries, and sold in this State, amounts to an annual importation and sale of about fifteen hundred barrels of thirty-one gallons each, of the aggregate value of $10,000.00.

Eighth. That beer, whatever cereals may be used in its manufacture, must, for the purpose of sale and consumption, be enclosed in tight packages of glass or of wood, and when so prepared for sale by enclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so affects the beer as to rende- it stale, flat, unpalatable and sour and a complete loss. Your orator further states that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is five dollars ($5.00) per barrel of 31 gallons, and the average price per barrel of like capacity of beer manufactured out of and imported into the State of Missouri for sale is six and 50/100 dollars ($6.50).

Ninth. Your orator further shows unto your honors, that of beer

manufactured in the State of Missouri, there is exported from said State annually, not less than 975.000 barrels of 31 gallons each, of the aggregate value of about $4.875.000.00. That of the beer and malt liquors manufactured out of and imported into this State from other States and from foreign countries, there is exported from this State in the original unbroken packages not less than 400.000 barrels of 31 gallons each of the aggregate value of $2.600.000.00.

Tenth. Your orator further states that the said enactment of May 4th 1899, purports by its title, to be an inspection law only, enacted in pursuance of the public policy of the State and under its police power, to protect the public health and provide for the welfare of the citizens and inhabitants of the State, but your orator avers,
25 and so alleges the fact to be, that such enactment is not solely and alone an inspection law which said State might validly enact and enforce, but contains a revenue measure in this that the said inspection fee authorized by the said act to be charged on account of the inspection of beer and malt liquors and so authorized under pretense of meeting the legitimate cost of inspection is, in effect, a tax. That the entire expenditure authorized on account of actual inspection, as provided by the act itself, amounts to twelve thousand dollars ($12,000.00) a year, and no greater expense is authorized to be incurred on such account, while said enactment provides for the collection of fees from those engaged in the manufacture and sale and in the importation and sale of beer which when so collected upon beer annually sold in the State of Missouri, as hereinbefore set forth, amount to not less than five hundred and fifty thousand dollars ($550,000.00), an excess of more than five hundred thousand dollars ($500,000.00) above the cost of inspection; that the fee chargeable under said enactment upon beer and malt liquors manufactured out of and imported into the State from other States and from foreign States, exceeds the total authorized cost of inspection in any one year by not less than sixty thousand dollars ($60.000.00); that said excess of five hundred thousand dollars ($500,000.00) is, by the terms of the act, and by its necessary operation and effect, a specific tax upon beer sold in the State of Missouri and upon beer imported into said State from other States of the Union and from foreign countries and sold in said State of Missouri, and upon beer and malt liquors, which, being so imported, have not yet by sale become amalgamated into the general mass of the property in said State, and is levied for the purpose of replenishing and enriching and is required by the act to be turned into the general revenues of the State for the uses of such general revenue; and your orator further states that said bill, as introduced into the senate of the State of Missouri, was recognized by its framer to be a revenue bill and was entitled, when the same was introduced, "An act creating the office of inspector of beer and malt liquors and providing for an increase in the general revenue of the State." And that the said bill was treated throughout as a revenue measure and was sup-

ported as such by those who defended and voted for it in the senate and in the house of representatives of the Missouri General Assembly.

That the tax imposed under and by virtue of the said act is, in addition to the tax already paid by your orator on the product of your orator's manufactury in Wisconsin shipped into and sold
26 in the State of Missouri, and that the said tax is imposed solely upon the manufacturers of beer in Missouri whose product is sold in said State and upon the product of the manufactory of your orator, in Wisconsin, and of the foreign located breweries of all other brewers non-resident and non-citizens of the State of Missouri, which is imported into the State of Missouri, and before sale of such product so imported has been made, and before import bulk broken, while no such tax or charge is authorized, levied or charged upon beer and malt liquors, the product of breweries and manufactories located in said State of Missouri, where such product is intended for export from said State, though by said enactment the duty of inspecting and certifying to such domestic product so intended for export, is imposed upon such inspector of beer and malt liquors and his deputies, without other compensation for such services than his regular salary by such enactment provided, by reason whereof your orator charges that it is deprived of the protection of equal laws and of the equal protection of the laws.

Eleventh. Your orator further states that it is advised and does believe and so charges, that the said act of the General Assembly of May 4th, 1899, hereinbefore fully set out, is unconstitutional, inoperative and void, and that it is against the common rights and of no binding force, validity or effect for the following reasons, to-wit:

1. Because the said act of May 4th, 1899, is violative of section one of the fourteenth article of amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and also violative of section two of article four of said Constitution of the United States, which provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. Your orator states that said act of May 4th, 1899, violates said provisions of the Constitution of the United States in this: that said act arbitrarily selects the finished product of the non-resident and non-citizen of the State who is a manufacturer of beer and malt liquors importing his finished product into the State of Missouri, and imposes upon such product a tax *over* and greater than is imposed upon the finished product of manufacturers
27 of beer in the State of Missouri, or upon the property of any other person or class of persons in the State. That by reason of said arbitrary, unjust and unreasonable discrimination and class legislation, said act denies the foreign manufacturer of beer and malt liquors who imports his finished product into the State of Mis-

souri, equality before the law and deprives *them* of the protection of equal laws to which *they are* entitled.

2. Your orator further states that it is authorized by general license to carry on business in the State of Missouri and that its business in the said State consists almost wholly of importing into said State, for the purpose of sale therein and re-export therefrom upon said sales, the product of the manufactory of your orator in the State of Wisconsin. That in the usual course of its business in such commerce it is compelled to and does maintain large warehouses and storerooms in the State of Missouri and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its said business and commerce; that of the beer imported annually into the State of Missouri by your orator, a great portion, to-wit: not less than seventy-five hundred barrels of 31 gallons each, of the aggregate value of fifty thousand dollars ($50.000.00) is intended for export to other States and is sold and exported to other States. That in the due course and conduct of its said business, such beer is unloaded by your orator from the cars in which it has been imported into the State and is stored, in unbroken bulk, and in the original packages in which the same was imported, in the storehouses and warerooms of your orator, in the State of Missouri, That sales of such imports, in the unbroken and original packages in which imported, are thereafter effected by your orator, in the State of Missouri, to persons resident without and non-citizens of the State of Missouri, for export by your orator therefrom, and for delivery by your orator, in such original packages to the purchasers thereof at agreed points in other States and countries; that such imports of your orator, when so sold, are thereafter exported from the State of Missouri by your orator, as aforesaid, and no part or portion thereof is consumed within the State; that upon such imports so thereafter by your orator sold for export and so exported by your orator, your orator is compelled to pay and under protest, and in order to protect its property and rights from greater injury, does pay, to the State of Missouri, the same being exacted of your orator under the alleged authority of said enactment of the General Assembly, the sum of 39 cents per barrel as a tax, such payments so compelled to be made by your orator, amounting in the aggregate to three
28 thousand dollars ($3,000.) or thereabouts, annually; that if such tax be not paid by your orator to said State, your orator's servants and agents will be apprehended, fined and imprisoned as by said alleged enactment provided. to the great and irreparable injury of the business and property rights of your orator, and your orator's general license to carry on its business within the State will be revoked and annulled and no other license will be issued to it within a period of two years; in which event your orator's business within the State of Missouri will be wholly destroyed and its property rights irreparably injured, and the defendants, and each of them, threaten to enforce against your orator, in the courts of the State, all of the penalties prescribed by said enactment for a breach

of the provisions thereof should your orator refuse to pay such assessments, charges and taxes.

Your orator avers that said alleged enactment of the General Assembly of Missouri, unjustly discriminates against your orator in this; that beer, the product of the breweries of brewers, citizens of Missouri, and whose manufactories are situated therein, which product is intended for export from said State, are exempt from the payment of said tax and assessment to the full extent of their exports of said manufactured product, *which* your orator being an importer of foreign made beer into the State and engaged in selling within the State the beer so by it imported, for export from the State, and being engaged in so exporting its imports so by it sold, is compelled to pay to the full the said tax and assessment upon its said exports from the State, as aforesaid, by reason whereof your orator, being engaged in interstate commerce, as aforesaid, is deprived of its property without due process of law, and is deprived of the protection of equal laws and of the equal protection of the laws, contrary to the provisions and in violation of the first section of the fourteenth amendment to the Constitution of the United States; and the rights secured to your orator by section 2 of article 4 of the said Constitution are violated and destroyed in that your orator being a citizen of the State of Wisconsin engaged in interstate commerce is unjustly discriminated against in favor of domestic manufacturers in the manner and to the extent aforesaid, to the continued, great and grevious injury of your orator; that by reason of the premises said alleged enactment violates the provisions of clause three of section eight, article one of said Constitution, in that it seeks to regulate, by State enactment, commerce between
29 the States, all of which is contrary to the rights and privileges guaranteed to your orator and to your orator preserved by the said provisions of the Federal Constitution.

3. Your orator further states that said act violates the provisions of the fourteenth ame-dment to the Constitution of the United States in this, that by the terms of said enactment it is made the duty of the inspector of beer and malt liquors and his deputies, to inspect and certify to all beer manufactured in the State of Missouri, and intended for export from said State; that said inspector and his deputies are forbidden to collect from such domestic manufacturers of beer intended for export, any fees whatever for the services rendered. That said inspector and his deputies are paid a stated salary annually for all services rendered by them under said act, which said salary is, in each instance, paid out of the fund resulting from fees derived from inspections made of beer sold and to be sold within the State; that complainant is compelled to contribute largely to said fund, as aforesaid, to-wit: more than five thousand dollars ($5,000.00) annually and more than five-twelfths annually of the entire amount authorized as the entire annual expense of inspection in the whole State of Missouri, and thus bears a proportionate amount of the salaries payable and paid to said beer inspector and

his deputies, although the total imports of your orator is only one-eighty-fifth (1/85) of the whole amount of beer sold within the State by producers of beer within the State; is only one-ninety-fifth (1/95) of the entire amount of beer sold within the State and although such imports by your orator amount to only one-onehundred and fiftieth (1/150) of the whole amount of beer manufactured within the State of Missouri. That by reason of the premises the finished product of manufactories of beer located without the State, and imported into the State for sale, are unjustly discriminated against in favor of the finished product of like nature made by citizens of the State of Missouri within said State, and such foreign products compelled to bear the burden of the cost of inspection of such domestic product intended for export, by reason of which your orator, in common with other importers of beer into the State of Missouri, is deprived of its property without due process of law and is denied the equal protection of equal laws and the equal protection of the laws to which it is entitled under the said fourteenth amendment to the Constitution of the United States.

4. Your orator further states that the said act of May 4th, 1899, violates the provisions of the fourteenth amendment of the Constitution of the United States in this, that said act while discriminating, as aforesaid, against beer imported into the State, and in favor of the domestic product of like nature, declares that any violation of the same shall be a misdemeanor, and then provides further, that such misdemeanor shall be punished by fine or imprisonment, or both, and in addition thereto the offender shall have his license or other authority giving him the right to manufacture or sell beer or other malt liquors in the State, revoked, and shall not again receive any such license or other authority for a period of two years thereafter; that such punitory provision is applicable, by the terms of said act, to the importers of beer manufactured in other States and countries and imported into the State of Missouri and is applicable to your orator, by reason whereof, your complainant is deprived of its constitutional right to so use its property to the best advantage and profit, as is permitted to citizens of the State of Missouri, similarly situated, whereby it is deprived of its property without due process of law and is denied the protection of equal laws and of the equal protection of the laws.

5. Your orator further states that the said act of May 4th, 1899, is repugnant to the provisions of the Constitution of the United States concerning the regulation of interstate commerce, being section eight of article one of said Constitution, as well as to section two of article four of said Constitution, declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, and to the second clause of section ten of article one of said Constitution, which provides that no State shall, without the consent of Congress, lay any imposts or duties upon imports or exports except what shall be absolutely necessary for executing its inspection laws; and is also further repugnant to section one, of the

fourteenth amendment to the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law." Your orator states that the said act of May 4th, 1899 violates the above provisions of the Constitution of the United States in this, that it requires all beer and malt liquors imported into the State of Missouri from other States and Territories or foreign countries, while still in the original packages and before being offered for sale, to be inspected and labeled and said tax of one cent
31 per gallon and two cents per package hereon to be paid and also as a pre-requisite to the right to sell beer imported into the State of Missouri, to be accompanied by an affidavit from the manufacturer or other reputable person having actual knowledge thereof, that no material- other than those specified in said act were used in the manufacture of said beer or malt liquor, and also that the person or corporation receiving beer or malt liquors for sale from other States and Territories or foreign countries shall, before offering the same for sale, submit the said imports for inspection as aforesaid, and shall procure from said inspector a certificate that such beer or malt liquor has been made exclusively of the ingredients specified in said act. Your orator respectfully shows unto your honors that no requirement is made of domestic vendors or domestic manufacturers and vendors of beer for the furnishing of such affidavits; that each carload imported by your orator into the State of Missouri consists of more than one kind or grade of beer, or of beer and other malt liquors, each the result of a different process of manufacture; that each different grade or kind of beer, and of other malt liquors, is, by said defendants, treated as a seperate shipment, though consigned to and delivered to your orator in the same carload lot; that such affidavit is required of your orator by the terms of said alleged enactment of the General Assembly of Missouri, with each shipment of its imports into the State; that your orator does, under protest, furnish said required affidavits; that such affidavits must be made before some officer authorized by law to administer oaths; that to procure each affidavit and the certificate of the officer thereto, your orator is compelled to and does expend the sum of fifty cents; that the shipment of beer and malt liquors made by your orator into the State of Missouri averages 2,000 annually and that to furnish the requisite affidavits to accompany the same your orator is required to expend annually the sum of one thousand dollars; that the requirement of the said affidavits imposes great and unnecessary expense and cost upon your orator and others engaged in foreign and interstate commerce; that though such affidavits are required of importers of beer into the State of Missouri, yet such affidavits when furnished, in nowise are permitted to have any force or effect in aiding the work of inspection, but each shipment is required to

be inspected, notwithstanding the furnishing of such affidavits whereby your orator, as an importer, is grievously discriminated against in favor of the domestic dealer in beer, and has imposed upon it grievous, burdensome and unnecessarily harsh regu-
32 lations which are not imposed upon domestic producers and vendors of beer, all of which your orator states is in violation of the provisions of the Constitution of the United States hereinbefore set forth.

Twelfth. Your orator further shows unto your honors that by said enactment there is levied upon the product of the manufactory of your orator, imported into the State of Missouri the said tax, in each year, the said sum of thirty-nine cents per barrel of 31 gallons which tax or charge so levied against the imports of your orator exceeds in the aggregate the amount or sum of five thousand dollars annually. That your orator is duly licensed by the State of Missouri to engage in the sale of beer within said State. That said defendants, and each of them, have, under the pretended authority of said enactment, and under pretense of performing the lawful duties of their alleged respective offices, forced your orator to pay the tax so levied upon the beer imports of your orator into the State of Missouri since the said 4th day of May, 1899, amounting in the aggregate to about twenty thousand dollars, to the date of the filing of this bill, and said defendants and each of them threaten to collect from your orator, by enforcement of said pretended enactment, still further and greater sums of money each and every year; that your orator has paid said sums of money under protest and because it was and is without remedy in the premises in the courts of the State of Missouri; which said courts have sustained and still sustain said enactment as a valid law of the State of Missouri.

Thirteenth. Your orator further states that it is engaged in the manufacture of beer in the State of Wisconsin and in the sale of its manufactured product in the State of Wisconsin and Missouri and other States of the Union; that its principal place of business is situated in the city of Milwaukee in the State of Wisconsin; that for many years last past it has owned and managed and still owns and manages in the city of Kansas City, Missouri, a depot or agency in which, during all of said time, it has been continuously storing and depositing the product of its manufactory. That in due and ordinary course of its business at frequent intervals it ships from its manufactory aforesaid, to its depot in the city of Kansas City aforesaid, beer in barrels, kegs and bottles, which are placed and kept in its said depot until the same are removed therefrom and delivered to its customers in the State of Missouri and elsewhere. That it has no brewery or plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri, consists solely in its maintaining the
33 depot in which it stores the product of its brewery, and in due course of its business it removes it from said depot and

delivers it in original pa-kages to its customers. That none of the product sold by your orator is manufactured or brewed in the State of Missouri, but that all its product which is stored or handled in the State of Missouri is manufactured in the State of Wisconsin, and is there put into barrels, kegs and bottles, and when thus put up it is shipped to and stored in its depot in the city of Kansas City, as originally put up and the same is thereafter removed therefrom and delivered to its customers in the same original packages; that in order for it to transport its product from the State of Wisconsin to the city of Kansas City and introduce the same in the State of Missouri, it is necessary to have in said State a depot or agency in which to store its product so shipped so that it may be thereafter removed therefrom and delivered to its customers; that its depot or agency is used as a place of storage and for no other purpose whatever, and in transporting its product from the State of Wisconsin to the State of Missouri and introducing the same therein, in order to preserve its said product fit and proper for consumption, it is necessary for it to have such depot or agency in which to keep said product. That it has for many years past conducted its business as aforesaid and it desires and intends to so conduct its business in the future.

That for the purpose of its said depot and agency in said Kansas City, Missouri, it owns and maintains large warehouses and storage houses especially constructed for its said business, and which would be of little or no value for any other business, all of great value, to-wit: of the value of fifty thousand dollars ($50,000.00); and owns and uses a large number of horses and wagons and other property of great value to-wit: of the value of one hundred thousand dollars ($100,000.00); and has built up and enjoys a large and well established trade and business from its said depot and agency in Kansas City, Missouri, which yields it a large revenue and profit, to-wit: annually profits to the amount of twenty thousand dollars ($20,000.00). And your orator states that unless the relief herein prayed for is granted, your orator's said property will be rendered wholly worthless and of no value and its said business will be wholly destroyed and its said income and profits lost to it.

Fourteenth. Your orator shows unto your honors, that said
34 enactment further unjustly and injuriously discriminates against your orator and in favor of the citizens of the State of Missouri who are producers of beer within said *said* State and for consumption therein in this: that by such enactment the product of the breweries of said citizens of Missouri may be inspected while the same is in the course of manufacture and before the same is bottled, barreled or otherwise enclosed in packages or vessels for sale, and without the destruction of any portion of the property of said citizens of Missouri for the purpose of such inspection; that after said beer shall have been enclosed in tight glass or wooden vessels, as hereinbefore alleged, in which form only it can be imported into Missouri from other States or countries, the said packages or vessels

cannot be opened without destruction to the contents of such vessels; that such wooden vessels are usually of 31 gallons' capacity and the average value of the contents of each thereof is $6.50; that by the terms of said alleged enactment each shipment into the State must be inspected; that to make such inspection one or more of said vessels of each shipment must be opened, involving the total loss of the contents thereof to your orator; that many such imports by your orator are composed only of barrels of 31 gallons' capacity each, to each shipment; that your orator manufactures in Wisconsin and imports into the State of Missouri ten different kinds or grades of beer and malt liquors; that each carload of your orator's said manufactures by it imported into the State of Missouri and consigned to your orator, almost invariably consists of several different kinds or grades of beer and malt liquors, seperately manufactured, and each kind or grade, as construed by the defendants, constituting a seperate and distinct shipment requiring seperate and distinct inspection as to each such shipment; that each such carload imported by and consigned to your orator containes, on an average, four kinds or grades of beer and malt liquors; that the inspection of every such shipment involves the destruction of the contents of at least one vessel of each shipment, of the average value of $6.50, whereby your orator will be subjected to heavy and continuous losses in and destruction of its property; that the citizens of the State of Missouri who manufacture and sell beer in the State and who manufacture beer therein for export, are not subject to such losses or any loss in course of inspection, in this, that such inspection of domestic products is made and is authorized by said enactment to be made, while the same are in course of manufacture and before the same are enclosed in wooden or glass cases; that by reason of the premises your orator is deprived of the equal protection of the laws and of the protec-
35 tion of equal laws, and is deprived of its property without due process of law, and said State of Missouri unjustly discriminates against and imposes grievous burdens upon your orator, in violation of the exclusive right of the United States to regulate commerce between the States; that by reason of the premises said pretended enactment is null and void and of no force.

Your orator states that the act providing for the inspection fees are further a violation of the provisions of the Constitution above set forth in this, to-wit: that all the beer stored in the depot or agency belonging to your orator, is imported from another State, as aforesaid, to-wit: the State of Wisconsin, in original packages, and that while the State has a right to enact a police regulation in reference to the beer so imported, it has no right to impose an inspection fee which shall go into the general revenue of the State and thereby become a revenue regulation, and under the guise of enforcing the police powers of the State, tax the finished product of your orator thus imported from the State of Wisconsin into the State of Missouri, for general revenue purposes and that said act is purely a revenue bill and not a police regulation, and that the

power to levy taxes for revenue purposes is distinct from the police power.

That the defendants pretending to act as such beer inspector and deputy beer inspector respectively, have instituted and caused to be instituted in the State of Missouri, a large number of criminal prosecutions, to-wit: about nine thousand criminal prosecutions for alleged violations of said act, and have threatened, and are about to, unless the relief herein prayed for be granted, and will, institute prosecution- against your orator and its customers in the State of Missouri, and other persons, firms and corporations similarly situated, all of which will produce irreparable injury and damage unto your orator and others similarly situated and for which it would have no adequate remedy at law.

Your orator further states that the enforcement of said act of the General Assembly of May 4th, 1899, would, for reasons herein-before stated, cause irreparable damage to the business of your orator and all other persons similarly situated in the State of Missouri. That the number of persons engaged in the brewing and sale of malt liquors, and who are affected by the terms of said act, is large, and that this action is brought by your orator for itself and on behalf of all persons similarly situated, in order to avoid a multiplicity of suits and to prevent irreparable damage to the property
36 and business of each of them.

Your orator further shows that beside the irreparable damage which will be inflicted upon its property and business by the inspection of beer as hereinbefore more fully set out, the act in question provides for heavy fines and penalties and imprisonment of all brewers who fail to conform to its provisions and who sell their product without submitting the same to such inspection and who fail to pay the unconstitutional tax imposed by said act, and said act provides that a prosecution and conviction for failure to comply with the terms of said act and of the payment of the tax shall — followed by the forfeiture of the brewer's right to manufacture and sell beer and other malt liquors in the State for a period of two years thereafter, which would cause ruinous damage to plaintiff's business and that of others similarly situated, in which large capital is invested, and in which many thousands of persons are employed.

Your orator further states that by reason of the facts hereinbefore set out, it is without adequate remedy at law, and that it now comes into a court of equity and prays for relief under the facts and circumstances herein stated, and your orator further states that unless the relief hereinafter prayed for is granted the damage to your orator and all others similarly situated will be irreparable and a multiplicity of suits will result.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendant may answer the premises but not upon oath or affirmation the benefit whereof is expressly waived by your orator, it now prays the

court that an — of injunction may issue out of this court directed to the defendant, the said G. Y. Crenshaw, claming to be the inspector of beer and other malt liquors in the State of Missouri, and to the defendant, John J. Downey, claiming to be deputy inspector of beer and other malt liquors in the State of Missouri, enjoining and restraining them their deputies, agents and servants, and each of them from enforcing or attempting to enforce said act of the General Assembly of May 4th, 1899, and from inspecting or attempting to inspect the beer or other malt liquors manufactured or offered for sale by your orator or others similarly situated, and from collecting or attempting to collect any tax or inspection fee under said act and from attempting to enforce said act as against any customer of your orator and others similarly situated; and your orator further p-ays that the said act of the General Assembly of the State of Missouri, be declared null and void, and for such other and further relief in the premises as the nature of the circum-
37 stances of the case may require, and may it please your honors to grant to your orator a writ of subpœna, to be directed to the said G. Y. Crenshaw, and John J. Downey, thereby commanding them at a certain time and under a certain penalty therein named, personally to appear before this honorable court, and then and there offer true, direct and perfect answer to make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against him in the premises, as shall seem meet and agreeable to equity. And your orator will ever pray.

HARKLESS, O'GRADY & CRYSLER,
Att'ys for Complainant.

STATE OF MISSOURI, } ss:
County of Jackson, }

George Schrader being duly sworn upon his oath deposes and says that he is agent for the Pabst Brewing Company and makes this affidavit on its behalf; that he has read the foregoing amended bill and that the matters and facts therein stated and contained are true.

GEO. SCHRADER.

Subscribed and sworn to before me this 17th day of November, 1902.

[L. S.] LENDRUM B. RIDGE,
Notary Public, Jackson County, Missouri.

My term expires Sept. 15th, 1906.

38 And afterwards to-wit: on the 9th day of February A. D., 1903 the following order was made and entered on the journal of said court, to-wit:

In the District Court of the United States for the St. Joseph Division of the Western District of Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Order.

The demurrer interposed by defendants to the bill of complaint having been heard by the court, the complainant appearing by its counsel Messrs. Harkless, O'Grady & Cryaler and Francis Downey, and the defendants by William M. Williams with E. C. Crow, attorney general of Missouri, and the court having taken the same under advisement, and being now fully advised in the premises:

It is ordered by the court that said demurrer be, and the same is hereby, overruled, and the defendants have leave to file answer to the bill on or before the next rule day of court, and the complainant has leave to file thereto reply within fifteen days after notice of the filing of the answer, when this cause shall stand at issue.

JCHN F. PHILIPS, *Judge.*

And afterwards to-wit:—on the said 9th day of February A. D., 1903 the Hon. John F. Philips judge of said court handed down and there was filed in the clerk's office of said court his opinion, which said opinion is in words and figures following, to-wit:

39 In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW ET AL., Defendants. } In Equity.

Messrs. Harkless, O'Grady & Cryaler and Francis C. Downey, Esq., attorneys for complainant.

Wm. M. Williams, Esq., with E. C. Crow, Esq., attorney general of Missouri, attorneys for defendants.

Statement of Case by the Court.

This is a bill in equity to enjoin the defendants, G. Y. Crenshaw, as State beer inspector, and his assistant, from enforcing against the complainant, a corporation of the State of Wisconsin, the provisions of an act of the legislature of the State of Missouri, entitled, "An act creating the office of inspector of beer and malt liquors of the

State and providing for the inspection of beer and malt liquors manufactured and sold in this State," approved May 4, 1899, (Session Laws of Missouri, 1899, p. 228). The bill sets out the act, the substantive provisions of which are, that it creates the office of beer inspector, to be appointed by the governor of the State, and defines his duties.

Section 3 provides that every person or corporation keeping a brewery for the manufacture of beer or malt products within the State shall cause the same to be inspected by said inspector.

Section 4 requires that such malt liquor shall contain no other substances than pure hops, or pure extract of hops, or pure barley, malt, or wholesome yeast, or rice.

Section 5, which it is conceded has special reference to the beer or malt liquors manufactured without the State, provides, in substance that every person or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same: "Upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State."

Section 6 provides for the keeping of books and record of fees collected, and expenditures incurred, to be reported to the governor of the State.

Section 7 makes it the duty of the inspector to cause to be inspected all beer or other malt liquors brewed, manufactured or sold in this State, and if found to come up to the requirements of the statute, he shall place upon the package containing such beer or malt liquor his label, certifying that the same has been inspected, and is made of wholesome ingredients.

Section 8 fixes the inspection fees at one cent for each gallon contained in each package, and two cents for labeling each package, which fees are to be paid into the State treasury. The word "package" as used in the act shall mean any kind of vessel, other than pint and quart bottles, in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer, etc., is placed in pint or quart bottles, a "package" shall be construed to mean not to exceed forty-eight pint bottles or twenty-four quart bottles, which, when manufactured and so bottled, must, before sale, be placed in suitable cases containing said number and size of bottles, for inspection and stamping by said State inspector; and when placed in vessels containing more than eight gallons, the word

"package" shall mean each eight gallons or fractional part thereof so contained in said vessel.

Section 9 provides that the expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund; and all fees received by the inspector under the provisions of the act shall, on or before the last day of each month, be paid into
41 the State treasury, and placed to the credit of the general revenue fund.

Section 10 declares that any person who shall sell any beer or malt liquors within this State which has not been inspected according to the provisions of the act, or contained in packages which shall not have upon them the certificate of the State inspector, etc., shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State, revoked, and shall not again receive any such license or other authority for a period of two years.

Section 12 provides that all prosecutions for violations and penalties under the provisions of the act shall be either by indictment or information in any court of competent jurisdiction.

Section 13 declares that all beer or other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

The bill of complaint, in its substantive allegations, states that the complainant is a manufacturer, in the State of Wisconsin, of grades of beer and malt liquor, requiring special treatment; and that it ships into the State of Missouri, annually, not less than 15,000 barrels of beer and other malt liquors, of thirty gallons each, of the aggregate value of not less than $100,000; that it has a warehouse in the State of Missouri in which its beer is stored; about one-half shipped into the State is subsequently re-shipped from its said warehouse and sold in other States. The bill states that a large number of persons are engaged in the manufacture of beer in the State of Missouri, a large quantity of which is for sale in the State and also for export therefrom; and that a very large quantity is also shipped into the State from other States and countries.

It is charged that said act of the legislature is in conflict with the Constitution of the United States, and is violative of the
42 complainant's rights thereunder, and especially under the fourteenth amendment thereto. The bill then proceeds to set out, with considerable specification, the objections to the validity of the statute, which may be briefly stated as follows:

1st. That the act imposes upon the product of the importer into the State a greater exaction than upon the product of the manufacturer in the State, or is imposed upon the property of other persons

in the State, and is, therefore, an unjust discrimination against the non-resident brewer; and is, therefore, in conflict with the fourteenth amendment and the interstate commerce clause of the Federal Constitution.

2nd. That not less than 7500 barrels of 31 gallons each, of the value of $50,000 shipped into the State by the complainant, is intended for subsequent exportation to other States; and is sold and reshipped to other States in the original packages, although brought into the State and stored in complainant's warehouse; and that complainant is compelled to pay, and does pay, to the State inspection fees upon that part of its product intended for other States, in violation of section 8 of article 1 of the Constitution of the United States.

3rd. That such inspection fees are not required to be paid on the beer manufactured in the State of Missouri and exported therefrom, while such fees are required on the beer manufactured outside of the State by complainant and shipped through Missouri into other States.

4th. That while $12,000 is appropriated for the cost of inspection, and that as no part of this sum is paid by the manufacturer of beer in the State of Missouri upon their products exported for sale, an unjust proportion of these salaries is collected from the complainant.

5th. That the act requiring the non-resident brewers to furnish an affidavit of the ingredients from which his beer is manufactured costs the complainant one thousand dollars annually, while the domestic manufacturers are not required to furnish such affidavits; and that when such affidavit is submitted it is of no force or effect, and does not take the place of an inspection. But that the act, nevertheless, requires in addition to such affidavit an inspection, which necessitates the breaking open of the packages in which the beer is contained, and that this will result in the destruction of at least one package of each shipment, as the beer in the bottle
43 opened will become "stale, flat and unprofitable."

In one paragraph of the bill it is alleged, in terms, that a large per cent. of the beer shipped by the complainant is stored in this State, in the original packages, or bulk, temporarily, for distribution and sale outside of the State, without breaking the original packages; and that the defendants subject such to the demands of the State under said act to the inspection fees; that they have caused persecutions to be instituted for violations of the act for refusals to pay such fees, and threaten further prosecutions, to the great annoyance of the complainant, attended with exposure to a forfeiture of its right to transact its business in the State; the particulars of which averment will more fully appear in the opinion of the court.

To this bill the defendants demurred, on the ground (1) that the act of the legislature in question is a valid law, and in no wise conflicts with any of the provisions of the Constitution of the United States.

(2.) That the bill states no ground for equitable relief, in that it is apparent that the defendants cannot do, and are not threatening to do, anything except to receive the affidavits that may be voluntarily submitted to them, and to label with the proper certificate the packages containing beer which they may be asked by complainant to label.

(3.) That the defendants under the act are not charged with the duty of instituting or prosecuting criminal proceedings for its violation; but the statute requires such violations to be by indictment or information; and even if it were the defendants' duty to institute such proceedings, a court of equity will not interfere by injunction for the sole purpose of preventing such prosecutions.

44 Opinion by PHILIPS, *D. J.*:

It is conceded to the complainant that the bill is not obnoxious to the objection that this is a proceeding against the State as such. It is directed against the defendants in their individual capacity, who, under the color of their office as inspectors, are alleged to be enforcing a legislative act in contravention of the Constitution of the United States, and, therefore, such act affords them no protection as representing the State. Counsel for defendants at the hearing conceded this.

The supreme court of the State, in State *ex rel.* *vs.* Wood, 155 Mo. 425, and State *vs.* Bixman, 162 Mo. 1, has affirmed the validity of the statute in question under the constitution and laws of the State. It held that the statute was not a revenue measure, as distinguished from a mere inspection fee or license under the police power of the State; that the manufacture and sale of intoxicating liquors in the State, not being the nature of a natural right, it is competent for the State, in permitting such occupation and business, to make such regulations and conditions therefor, in the interest of the public health of the people, as the legislature, in the exercise of police power of the State, may deem fit and proper to impose.

No matter, therefore, what may be the opinion of this court respecting the correctness of that ruling, in so far as it rests upon the constitution and laws of the State, it must adopt and follow such construction by the highest court of the State. Carghill *vs.* Minnesota, 180 U. S. 453, l. c. 466–467.

The important question, therefore, for the determination of this court is whether or not the act on its face, as applied to the instance and situation of this complainant, is in conflict with any of the supreme provisions of the Federal Constitution?

The act in question does not impose upon imported beer any greater inspection fee than upon the domestic manufactured article. This being true, although the mode of ascertaining and collecting be different, being necessarily so, dependent upon a difference in circumstances, constitutes no discrimination, within the meaning of the

Constitution, against the importer; and is not, therefore, an
45 attempt at interference with the freedom and equality of interstate commerce. Hinson *vs.* Lott, 8 Wall. 148.

The principal criticism by complainant's counsel is predicated of sections 5 and 13 of the statute. A reasonable construction of sec. 5 does not justify the contention that it has any application to the instance of beer manufactured outside the State and shipped through the State for sale in another State; nor to such shipment into the State to a warehouse—of the nature of an entrepot—of the shipper, *used merely for convenience or eligibility* for distribution beyond the limits of the State. The supreme court of the State, in State *vs.* Bixman, *supra*, p. 40, clearly enough indicates that the State places no such construction on the act. The court said:

"The law exacts that every brewer, foreign as well as domestic, who sells in the State, shall pay the same inspection fees or price for the privilege of selling in this State, and shall submit to the same inspection; on the other hand, the law exempts all brewers who export from paying these fees."

The language of section 5 is, "Every person, persons or corporations who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in this State shall, upon receipt of same, and before offering for sale, notify the inspector, etc." The clear intendment of this is that it has reference alone to beer received in the State for sale here. Where the language of a statute is such as to be reasonably referable to a subject matter within the legal competency of the legislature to regulate, that interpretation should obtain which refers its import to a valid, rather than an invalid act. "Nothing is better settled than that a statute should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." Lau Ow Bew *vs.* United States, 144 U. S. 47, l. c. 59. This is predicated of the wise rule laid down in Plowden, 205:

"From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances."

46 Does the fact that section 13 of the act exempts the domestic manufacturer from any fee for the inspection of beer to be exported by him outside of the State, create an illegal discrimination against the foreign importer? If the State, in the in-

terest of the public health, requires the domestic exporter to submit his product to inspection by the local inspector prior to the exportation, without fee, how does it concern the foreign manufacturer? The Missouri manufacturer shipping into another State for sale, like the Wisconsin exporter, is subject to the laws of the State where the sale is made, and must submit to such regulations as are imposed by the State where the product is to be consumed. It would be subject to the police power of such State for regulation. After the complainant has shipped his product into the State for sale here, and the same is sold by him, it does not concern him what disposition his vendee may make of it, or what impediments or burdens his vendee may encounter in disposing of it. The inspection fee exacted by the statute being only on beer shipped hither for sale in the State, if the purchaser intends his purchase for sale in another State, he would not be subject to any local inspection fee in Missouri on the article in the original package in transit to another State, or temporarily stored here for the convenience of foreign distribution. It is only when shipped here to become mingled with the common property of the State that it becomes amenable to the police laws of the State. In short, the complainant is in no position to complain of any discrimination as against him by the State until his product shipped hither is subjected to some police regulation or exaction not common to a like domestic product. The allegations of the bill in this respect will be discussed further on.

This brings us to the consideration of the objection, based on section 5 of the act, respecting the requirement that when a consignment is made for sale in this State, the shipper is required to furnish the inspector "with a sworn affidavit, subscribed by an officer authorized to administer oaths from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same." The making of these affidavits by complainant, it is
47 alleged, costs it annually about one thousand dollars; whereas no such burden is imposed upon the domestic manufacturer. In construing this provision regard must be had to the scheme of the police regulation of the State, which was, as held by the supreme court of the State, to protect the people against the use of unwholesome beer. To this end, all the beer sold for consumption in the State should contain no other substances than those defined by the act. It was competent for the State legislature to devise some reasonable and practicable method of ascertaining and evidencing the fact of a compliance with this requirement. In the case of a domestic manufacturer, as conceded at the hearing, the inspector goes to the brewery and makes his test by "taking a sample of the mash and of the beer that they are fermenting. This method would not, in the slightest manner, interfere with or hinder them in their oper-

ations, and would at the same time enable the inspector to inspect hundreds and thousands of gallons of beer from the one sample; for as the mash is, so must the beer be." It is impracticable for the State to send and maintain an inspector at every outside brewery, to make an inspection and test. Hence, in respect to the foreign shipper, the legislature had recourse to the acceptance from him of an affidavit, evidencing a compliance with the requirement as to the ingredients of the imported article. It would most certainly seem that if this were all, the importer ought not to complain. The chief objection to accepting such *ex parte* evidence of the purity of the imported article might, with great propriety, be made by the consumer. Such evidence might be very unreliable and afford little protection. The State, having no extra-territorial jurisdiction, could not proceed against the nonresident importer for a violation of its penal statute; and, singularly enough, the statute does not undertake to impose any penalty upon the agent or representative of the foreign manufacturer for presenting in this State to the inspector a false affidavit. I suspect that the legislature was more concerned in the matter of obtaining fees, to swell the exchequer of the State, than in the protection of the people who might drink beer. If, however, such affidavit be accepted by the State as sufficient evidence, it certainly ought not to lie in the mouth of the importer to complain that the trouble of making, on a stereotyped form, such perfunctory statement, and the in-
48 considerable fees likely to be paid therefor, enable him to stand on an equal footing with the domestic manufacturer, who is compelled to admit to his premises the inspector to make an actual test of every tub of mash, and to follow it with labels on the receptacles into which it is placed for sale. It seems to me, in this respect, that the law is rather a discrimination in favor of the importer. Law is intended to be a sensible and practicable thing; and, therefore, it recognizes distinctions growing out of different situations; and different rules may be made respecting different classes, where classification is a result arising *ex necessitate rei*. The equality of right exacted by the fourteenth amendment to the Federal Constitution is only that the laws "shall operate on all alike *under the same circumstances*." Clark *vs.* Titusville, 184 U. S. 333.

Further objection to said section 5, in this connection, is the contention, that in addition to such affidavit the inspector is required to make an inspection of each package containing beer; that such inspection implies a physical opening of at least one bottle in each package containing beer in bottles, and when in kegs or barrels the opening and taking therefrom a sufficient quantity to sample, which would involve the destruction and loss of the article so opened, as it is a well known fact that beer when thus opened becomes stale and unsalable. Reading the phrase in section 5, "upon receipt of said affidavit the inspector shall inspect and label the packages containing said beer or malt liquor," in connection with sections 7 and 8, which impose upon the inspector the duty of causing to be inspected

all beer or other malt liquors brewed, or manufactured, or sold in this State, to determine its ingredients, gives color to the contention that a physical inspection of the imported beer for sale in the State, in the mind of the legislature, is as much required as in the case of the domestic manufacturer. It must be conceded that the supreme court of the State, in passing upon said section 7, in respect of the domestic manufacturer, was placed in distress in upholding the validity of the statute, to avoid a construction that seemingly required a physical opening of the package after it was put up by the brewer for sale, by holding that it was contemplated that the inspection should be made of the mash or fermented beer at the brewery before it
49 passed into the packages or receptacles for sale. The court felt compelled to resort to this judicial *coup de tat* to avoid the criticism that such mode of instruction involved a physical destruction of a part of the property of the owner, without making any provision for just compensation therefor, and thus taking private property without due process of law; and further to escape following the recognized rule that in determining the validity of a legislative act, the question is, what do its terms authorize to be done under them, rather than what is done under them. But, as already shown, the mode of inspection suggested by the State supreme court respecting the inspection of domestic beer would be quite impracticable in the case of beer manufactured outside of the State. Evidently it was contemplated by the legislature that the phrase "upon the receipt of said affidavits the inspector shall inspect and label the packages" should imply that the inspector is merely to inspect the same thing he labels, *i. e.* the package: that it was intended that the affidavit should take the place of inspecting by test the ingredients of the package, and that the inspection to be made by him is only to see that the packages labeled correspond with those covered by the affidavit. And I doubt not, as stated by defendants' counsel at the hearing, this is the course in fact pursued by the inspector.

Is this construction given by defendants' counsel to this clause of section 5 unreasonable or unnatural? Why should the legislature provide that the importer alone should furnish an affidavit, giving the constituent elements of his product, if that were to be followed up by a physical test, by sample, of each package? The affidavit under such construction could perform no reasonable office. It would be wholly a work of supererogation. A physical inspection by opening the package would not only disclose all that the affidavit gives, but would furnish all the safe guard that the State could want. In construing statutes courts should not exhibit an eagerness to find flaws, nor prefer that hypercritical, technical import of a term which would reduce the statute to a legal absurdity, rather than that which, while giving a sensible office and meaning to the context, will preserve the consistency and efficiency of the law. As said by Mr. Justice Field, in Kirby *vs.* United States 7 Wall. 486:

"All laws should receive a sensible construction. General terms

should be so limited in their application as not to lead to in-
50 justice, oppression, or an absurd consequence. It will, always, therefore, be presumed that the legislature intended exceptions in its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

The bill of complaint does not in terms charge that the inspector has ever attempted to open the imported packages with a view of making an analysis of the contents of a single bottle or cask, or that he threatens to do so. I should not hesitate to interpose by injunction to protect the importer of beer against a rule of inspection which would destroy a valuable part of the shipper's property without just compensation therefor to the owner.

The ultimate position of complainant's counsel is that the State, recognizing the traffic in intoxicating liquors, imported beer stands upon the same footing as any other article, or commodity of merchandise, brought into the State; and the State may not, under the guise of inspection fees as a police regulation, subject it to onerous exactions, bearing no just relation to the expenses attending such inspection. The Supreme Court of the United States has repeatedly said, in discussing the interstate commerce clause of the Constitution, that "the mere fact that an act purports to be an inspection measure is not conclusive upon the court; its purposes and objects must be determined by its natural and reasonable effect. The court is not to be misled by mere pretenses." Scott *vs.* Donald, 165 U. S. 58; State *vs.* Barber, 136 U. S. 313. That court has also said that "a burden imposed by a State upon interstate commerce is not to be maintained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." Railroad Co. *v.* Husen, 95 U. S. 465.

The case at bar, however, is to be determined in its relations to the act of Congress of 1890 (26 St. at Large, p. 313), known as the Wilson bill, which declares,

"That every fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

Counsel for complainant are in error in asserting that this act has
application alone to States maintaining prohibition laws.
51 Color is given to this contention by certain language employed in the opinion in Scott *vs.* Donald, *supra*. But in the later case of Vance *vs.* Vandercook Company (No. 1), 170 U. S. 438, that language is explained, and its application properly limited. The court said:

"The plain purpose of the act of Congress having been to allow

State regulations to operate upon the sale of original packages of intoxicants coming from other States, it would destroy its obvious meaning to construe it as permitting the State laws to attach to and control the sale only in case the States absolutely forbade sales of liquor, not to apply in case the States determined to restrict or regulate the same. * * * If the purpose of the act had been to allow the State law to govern the sale of the original package only where the sale of all liquor was forbidden, this object could have found ready expression, whilst, on the contrary, the entire context of the act manifests the purpose of Congress to give to the respective States full legislative authority, both for the purpose of prohibition as well as that for regulation and restriction with reference to the sale in original packages of intoxicating liquors brought in from other States. * * * Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or it may provide equal regulations for the inspection and sale of all domestic and imported liquors and be valid. But the State cannot, under the congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful."

Laws for protecting the people against impure food, adulterated milk and butter, decayed vegetables, and unwholesome ingredients in intoxicating liquors, inhere in the police power of the State. The fact that a large revenue may incidentally result is not fatal to such a law, especially in respect of intoxicants. In the very nature of the case, the amount of the license fee must rest in the sound discretion of the legislative branch of the Government. As said by Mr. Justice Catron, in the license cases, 5 How., 504–599:

"The assumption is, that the police power is not touched by the Constitution, but left to the States, as the Constitution found it. And this conceded; and whenever a thing, from character and condition, is of a description to be regulated by that power of the State, then the regulation may be made by the State, and Congress cannot interfere."

Subject, of course, to the ascertainment by the Federal courts, in a proper case, as to whether or not the thing be within the essential police power of the State.

This character of legislation is bottomed upon the postulate in this country, that the right to sell intoxicants is not a natural right. Hence, it is universally recognized that the State may prohibit entirely its sale within its territory, or it may grant permission to sell under such restrictions and regulations as the law-making department, in its wisdom, may see fit to impose. And so long,
52 under the statute, as the regulation and exaction are free from unequal discrimination against products the subject of interstate commerce, this complaint is without legal grievance.

The large yield to result to the State from the inspection fees, exacted beyond the cost of executing the law, is supported by that eminent jurist Judge Cooley, who said:

"It is proper and reasonable to take into account not only the expense merely of direct regulation, but all the incidental consequences which may be likely to subject the public to cost in consequence of the business licensed. In some cases the incidental consequences are much the most important, and, indeed, are what are principally had in view when the fee is decided upon. * * * The business of selling intoxicating liquors has a powerful tendency to increase crime and pauperism. It renders a large force of peace officers essential, and it adds to the expense of the courts, and of nearly all branches of civil administration. It cannot be questioned, therefore, if it is to be licensed by the public authorities, that it is legitimate and proper to take into account all the probable consequences, or that the payment to be exacted should be sufficient to cover all the incidental expenses to which the public are likely to be put by means of the business being carried on." Cooley on Taxation, 2nd ed. p. 599; State *vs.* Luddington, 33 Wis. 107.

It is upon this theory that high license laws of the State are upheld.

"Such laws are regarded 'as police regulations, established by the legislature for the prevention of intemperance, pauperism and crime, and for the abatement of nuisances,' and are not regarded as an exercise of the taxing power. 'Pursuits that are pernicious and detrimental to public morals may be prohibited altogether, or licensed for a compensation to the public.' It does not follow because the license fee is large, or because it may become a part of the public revenue that it is, therefore, a tax." State *ex rel. vs.* Hudson, 78 Mo. 302, *l. c.* 304–305.

It must be held, however, that the demurrer to the bill is too broad. In the second subdivision of the 11th paragraph of the bill it is alleged,

"That in the usual course of its (complainant's) business in such commerce it is compelled to and does maintain large warehouses and storerooms in the State of Missouri and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its said business and commerce; that of the beer imported annually into the State of Missouri by your orator, a great protion, to wit: not less than seventy-five hundred barrels of 31 gallons each, of the aggregate value of fifty thousand dollars ($50,000.00) is intended for export to other States. That in the due course and conduct of its said business, such beer is unloaded by your orator from the cars in which it has been imported into the State and is stored, in unbroken bulk, and in the original packages in which the same was imported, in the storehouses and warerooms of your orator, in the State of Missouri. That sales of such imports, in the unbroken and original packages in which imported, are there-fter effected by your orator, in the State of Missouri, to persons resident without and non-citizens of the State of Missouri, for export by your orator therefrom, and for delivery by your orator, in such original packages to the purchasers thereof at agreed points in other

States and countries; that such imports of your orator, when
53 so sold, are thereafter exported from the State of Missouri by your orator, as aforesaid, and no part or portion thereof is consumed within the State; that upon such imports so thereafter by your orator sold for export and so exported by your orator, your orator is compelled to pay and under protest, and in order to protect its property and rights from greater injury, does pay, to the State of Missouri, the same being exacted of your orator under the alleged authority of said enactment of the General Assembly, the sum of 39 cents per barrel as a tax, such payments so compelled to be made by your orator, amounting in *in* the aggregate to three thousand dollars ($3,000.), or thereabouts annually; that if such tax be not paid by your orator to said State, your orator's servants and agents will be apprehended, fined and imprisoned as by said alleged enactment provided, to the great and irreparable injury of the business and property rights of your orator, and your orator's general license to carry on its business within the State will be revoked and annulled and no other license will be issued to it within a period of two years; in which event your orator's business within the State of Missouri will be wholly destroyed and its property rights irreparably injured, and the defendants, and each of them, threaten to enforce against your orator, in the courts of the State, all of the penalties prescribed by said enactment for a breach of the provisions thereof should your orator refuse to pay such assessments, charges and taxes."

These facts stand admitted by the demurrer. As already maintained, the 5th section of the legislative act in question was intended to apply only to beer or malt liquors shipped into the State for use here. The right of the State to pass inspection laws, recognized in article 1, sec. 10, of the Constitution, in the very nature of the reservation, is limited to the domestic products of the State, either for exportation or home consumption, or such as come into the State subject to the police power of regulation. "They act upon the subject before it becomes an article of foreign commerce among the States, and prepare it for that purpose." Bowman *vs.* Chicago, etc., Railway Co., 125 U. S. 488; Gibbons *vs.* Ogden, 9 Wheat. 203. It has no reference to and cannot touch foreign manufactures which become subjects of interstate commerce in passing through the States, or which may be temporarily stored here, for distribution in the original bulk or package *in transitu* to another State. In the recent case of Attorney General *ex rel. vs.* Great Western Tea & Coffee Company of St. Louis, decided by the supreme court of this State and not yet published, respecting the right of the company importing baking powder into the State, it was held that the statute of this State eliminating from the manufactured article alum as an ingredient is not applicable to the foreign manufactured powder imported into the State, while the act is valid as to the article manufactured in the State. This distinction evidently rests upon the proposition that such food product,

being a natural subject of interstate commerce, is not subject to such police regulation of the State. I assume this
54 to be the distinction drawn by the court between the baking powder case and the beer case heretofore decided by that court, though I have not seen the full report of the recent case. The police power, dependent in the case at bar for its exertion upon the idea that it is essential for the protection of the health and good of the people of the State, its exercise can have no foundation of right, even as applied to intoxicants, (to deal in which is not a natural right) not manufactured in the State, and not to be consumed or used in the State. To subject the foreign product in its passage through the State to any exaction by the State, either by way of taxation or inspection fees, would be a direct interference with interstate commerce. So that if complainant's beer or malt liquor not shipped into this State for sale is subject to the conditions and annoyances to the complainant, or its agents or servants, in the manner alleged in that part of the bill above quoted, it invites and justifies the interposition of the injunctive process of the court. This jurisdiction is supported by the recent decision of the court of appeals of this circuit in the case of City of Hutchinson *et al. vs.* Beckham *et al.*, 118 Fed. 399. In that case an ordinance of the city of Hutchinson, Kansas, was assailed on ground that it undertook to impose a license tax upon complainants' goods shipped from Missouri, and stored for distribution in complainants' warehouse in the city of Hutchinson, when no like exaction was made of other merchants engaged in local business, or of those who did maintain their principal office there, etc. The ordinance imposed fines, and exposed the offender to arrest and imprisonment. It was alleged that such criminal proceedings had been instituted, and the city threatened to continue such prosecutions, to the great annoyance, and injury to complainants in the pursuit of their rightful business as importers of interstate commerce. Thayer, circuit judge, said:

"Now, conceding that the validity of the ordinance might have been tried in any one of the criminal prosecutions thus brought by the city, yet, as the right of appeal existed from any judgment which might have been rendered therein, it is apparent that months, and possibly that some years, might have elapsed before the invalidity of the ordinance would have been definitely established, and that in the meantime the complainants might and probably would have been compelled to defend a multitude of suits, and submit to daily interruptions of their business, which would have proven to be very annoying, and probably disastrous. In such a case,
55 the rule that a suit in equity will not lie to restrain the collection of an illegal tax, merely on the ground of its illegality, does not apply, because circumstances are alleged which show that if left to their remedy at law the complainants would probably be subjected to numerous prosecutions, besides sustaining great and irreparable loss in the prosecution of their business.

When, in addition to the fact that an illegal tax has been imposed, it further appears that the persons or corporations upon whom it is imposed will be called upon to defend a multitude of suits, or that they will sustain great injury if the State or municipality is left free to enforce the tax by the usual remedies, courts of equity never hesitate to assume jurisdiction and grant injunctions against those who are seeking to enforce the collection of the tax if it appears to be clearly illegal." Dows vs. City of Chicago, 11 Wall. 108, 110, 20 L. Ed. 65; Railway Company vs. Cheyenne, 113 U. S. 516, 525, 5 Sup. Ct. 601, 28 L. Ed. 1098; City of Ogden vs. Armstrong, 168 U. S. 224, 239, 240, 18 Sup. Ct. 224, 42 L. Ed. 444; Heywood vs. City of Buffalo, 14 N. Y. 534.

As the demurrer goes to the whole of the bill, if any part of the bill be good, the demurrer must be overruled. As the defendants will have *to* leave to answer, they can put in issue said allegations, if untrue, and any other matters of fact alleged in the bill they may deem proper to controvert.

It results that the demurrer must be overruled.

56 And afterwards to-wit: on the 2nd day of March A. D. 1903 there was filed in the office of the clerk of said court the joint and several answer of defendants to amended bill of complainant, in words and figures following to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants. } In Equity.

The Joint and Several Answer of the Above Named Defendants to the Amended Bill of Complaint of the Above Named Complainant.

In answer to said bill we, G. Y. Crenshaw and John J. Downey, says as follows:

First. We admit that complainant is and was at all the times mentioned in said bill a corporation duly incorporated, existing and doing business under and by virtue of the laws of the State of Wisconsin; is a citizen of the State of Wisconsin, domiciled therein, having its principal place of business in the city of Milwaukee in said State; that defendant G. Y. Crenshaw is a citizen of the State of Missouri, residing in the city of St. Louis in said State, and that the defendant John J. Downey is a citizen of the State of Missouri, resident at the city of St. Joseph in said State, and within the St. Joseph division of said western district.

Second. We admit that the business of vending and dealing in

beer and other malt liquors now is and was at all times hereinafter mentioned in the State of Missouri, and by the laws of said State, recognized as legitimate trade and commerce, and the manufacture and sale of beer and other malt liquors, and the importation into said State of beer and other malt liquors, and the sale of the beer and other malt liquors so imported, and the exportation from the State of Missouri of liquors imported into and thereafter sold within and exported from said State is and was as aforesaid permitted in and authorized by the laws of said State, and was and is recognized as a legitimate and lawful trade or calling, but said business is and was subject to certain regulations and requirements provided by the laws of said State, and these requirements must be complied
57 with before it is lawful to sell beer and other malt liquors for consumption within said State.

Third. We admit that complainant is and was at all the times referred to in the bill, engaged in the business of brewing, manufacturing, and selling beer in the State of Wisconsin, and also in the business of importing into and selling in the State of Missouri beer manufactured by it in the State of Wisconsin. We do not know, and therefore cannot state of our own knowledge whether the complainant is engaged in selling beer in other States of the United States, or whether it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, or whether each kind or grade is seperately manufactured or made or requires seperate treatment, and we have no knowledge or information sufficient to form a belief in regard thereto. We admit that the complainant annually imports into and sells in the State of Missouri a large quantity of beer and other malt liquors, but do not know, and therefore cannot state of our own knowledge, whether it annually imports into the State as much as fifteen thousand barrels, of thirty-one gallons each, or whether the same is of the aggregate value of not less than one hundred thousand dollars, but we do not believe from our information that the amount shipped by complainant is that much.

Fourth. We admit that at the regular session of the General Assembly of the State of Missouri, in the year 1899, an act or statute was passed entitled "An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in the State." We admit that said act is correctly copied in the bill of complaint, and that it was duly approved on the 4th day of May, 1899, by the governor of said State, and was published in the manner provided by law for the publication of acts of the General Assembly, but we deny that said statute was enacted under the mere pretense of regulating the trade in beer and other malt liquors and only in reality for the purpose of increasing the general revenue of the State. Section eight of said act, as set out in the bill of complaint, was amended by the General Assembly of the State of Missouri at the regular

session of said General Assembly in the year 1901, by an act entitled, "An act to amend section 7891 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor," and said section eight, which fixed the inspection fees as amended by the General Assembly of 1901, which amendment was approved by the governor of said State on the 16th day of April, 1901, and then and there became
58 a law of said State, is in words and figures as follows, to-wit:

"The inspector shall be entitled to receive for inspecting and guaging one-half a cent for each gallon contained in each package, and one cent for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other that pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquor shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel."

Fifth. We admit that G. Y. Crenshaw was appointed and is now acting under said act of the legislature, and that John J. Downey was thereafter, in accordance with said act, appointed deputy inspector of beer and malt liquors of said State, and that said parties have duly qualified, and that we now claim to be entitled to act as such inspector and deputy inspector, and entitled to discharge the duties of our respective offices, and claim to be authorized and entitled to enforce the provisions of said act, as far as the beer inspector and deputy beer inspector are authorized so to do by the terms and provisions of said enactment of the General Assembly, and we admit that we publicly stated and announced our intention of enforcing the provisions of said act, and that we are enforcing the provisions thereof, but deny that the enforcement of the same is a gr-evious and continued injury, or is any injury to the complainant in its business other than the mere fact that complainant is required to pay for the inspection fees upon the beer and malt liquors which it sells for consumption in the State of Missouri.

Sixth. We admit that the persons and corporations named in the sixth paragraph of the bill are engaged in the manufacture of beer in the State of Missouri. We are not able to state of our own knowledge whether the amount of beer manufactured by said parties and the value thereof is correctly stated in said sixth paragraph of said bill, and have no information upon that subject sufficient to form a belief.

59 Seventh. We admit that there are other persons, firms and corporations engaged in manufacturing beer in other States who annually ship and sell beer so manufactured in the State of Missouri. We deny, however, that the amount stated in the seventh paragraph of the bill of complaint is shipped into, said State, or that the value thereof is as stated therein.

We also admit that beer is shipped from foreign countries into said State of Missouri for sale, but we are unable to state the exact amount thereof or the exact value of said shipments.

Eight. We admit that beer, of whatever cereals it may be manufactured, for the purpose of sale and consumption, must be inclosed in tight packages of glass or wood, and when prepared for sale by enclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for immediate consumption; that to open the same otherwise than for immediate consumption of the contents so effects the beer as to render it stale, flat and unpalatable and sour and a complete loss.

We admit that the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is five dollars per barrel of thirty-one gallons, and that the average price per barrel of like capacity of beer manufactured out of and imported into said State for sale is six dollars and fifty cents.

Ninth. We do not know of our own knowledge the exact number of barrels, or the exact value of the beer manufactured in the State of Missouri, that are shipped to other States, and have no knowledge or information thereof sufficient to form a belief. We admit that a large quantity of beer is so shipped out of this State for sale in other States. We do not know and have no knowledge or information sufficient to form a belief whether, that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries, there is exported from this State in the original, unbroken packages not less than four hundred thousand barrels, of thirty-one gallons each, or whether the beer so exported is of the value of two millions six hundred thousand dollars. We do not know, and have no knowledge or information sufficient to form a belief as to the amount of beer that is brought into this State and then shipped into other States in the original packages, nor have we knowledge or information sufficient to form a belief as to the value of such beer.

Tenth. We deny that the act of the General Assembly of the
60 State of Missouri, set out in said bill, levies a tax upon the beer, or that the inspection fee provided in said act is a tax upon such property. We admit that the inspection fees collected under said act are greater than the salaries of the inspector and deputy inspectors and the expenses of making such inspection. We deny that the inspection fees collected under said act amount to not less than five hundred and fifty thousand dollars annually, or that

such fees are five hundred thousand dollars in excess of the cost of inspection, and we deny that the fees collected under said act for the inspection of beer and malt liquors manufactured out of and imported into this State from other States and foreign countries exceeds annually by the sum of sixty thousand dollars the cost of inspecting such beer imported from such other States and foreign countries, or that the excess over the cost of inspection is by the terms of the act a special tax upon beer sold in the State of Missouri and upon beer imported into the State from other States and foreign countries and sold in said State, or upon beer and malt liquors which being so imported have not yet by sale become amalgamated into the general mass of the property of said State, or is levied for the purpose of replenishing or enriching the general revenues of the State.

Eleventh. We deny that the act of the General Assembly set out in said bill is unconstitutional, inoperative and void, or that it is against common right and of no binding force, validity or effect, for all or any of the reasons set out in sub-divisions one, two, three, four or five of paragraph eleven of the bill of complaint, and we deny that the act violates section 1 of the 14th amendment to the Constitution of the United States, or section 2 of article IV of the Constitution of the United States, or that it is in conflict with any of the provisions of the Constitution of the United States or the amendments thereto; but we aver that said act of the General Assembly of the State of Missouri is a valid enactment, and that it was within the power of the General Assembly of said State to adopt said law and within the legal authority of said *said* State, under the Constitution of the United States, to invest these defendants with the power to make the inspection of beer and malt liquors as required by the terms of said act. We deny that said act, by its terms or provisions, imposes upon the person or corporation manufacturing beer in other States and bringing the same into the State of Missouri for sale here, any different or greater inspection fee than is imposed by the terms of said act upon the manufacture-'s of beer in this State, or
61 that said act makes any discrimination between non-resident and resident manufacturers of beer. We deny that said act, by its terms or under any reasonable construction thereof, requires the complainant to pay the inspection fee required by the eight- section thereof, as amended by the General Assembly of 1901, upon beer shipped by complainant into the State of Missouri to be reshipped from its warehouse in this State for sale in other States.

We have no knowledge or information sufficient to form a belief as to the quantity or value of the beer that is shipped annually by the complainant into the State of Missouri which is intended for export to other States and is sold and exported into other States, and we cannot say, either from our own knowledge or from our information or belief whether the beer so shipped into this State by the complainant annually, but not intended for sale here, is not less than seventy five hundred barrels of thirty one gallons

each, or whether it aggregates in value fifty thousand dollars, or whether in fact any such beer is shipped into the State of Missouri and intended by complainant to be exported therefrom. We do not know of our own knowledge or belief whether such beer is unloaded from the cars in which it has been imported into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was imported in the storehouse or warehouse of the complainant in the State of Missouri, nor do we know, nor have we knowledge sufficient to form a belief concerning any sales of such imports in unbroken and original packages to persons resident without and non-citizens of the State of Missouri, to be delivered in such original packages to the purchasers thereof at agreed points in other States and countries.

We deny that complainant is compelled to pay, or that it ever has paid, or that it has ever been required or asked to pay any inspection fees upon any of its beer not intended for sale and consumption in this State. We deny that we have ever attempted to inspect, or claimed the right to inspect and label any of complainant's beer not intended for sale and consumption in the State of Missouri. We deny that complainant has ever been required to have inspected any beer which was shipped into the State of Missouri, stored in any of complainant's warehouses in said State, and intended for export in the original packages into other States, or to pay any inspection fees on account thereof. We deny that in order to protect its property or otherwise the complainant does pay to the State of Missouri the sum of thirty nine cents per barrel, or any other sum, as a tax upon beer not intended for consumption
62 in said State of Missouri, or that it has ever paid, or been asked to pay, or compelled to pay any sum or any amount whatever upon any of its beer which was stored in its warehouses in the State of Missouri and subsequently exported from said State for sale and consumption elsewhere.

We deny that we or either of us, at any time or in any manner, requested the complainant to submit to an inspection under the act of the General Assembly hereinbefore referred to, any of its beer not intended for sale and consumption in the State of Missouri, or to pay any inspection fees upon beer only temporarily in the State and to be exported from the State for sale elsewhere, or that any such inspection fees have been paid to the defendants or collected under their authority. We have only inspected and labeled beer which was represented to us by the complainant as intended for sale and consumption in the State of Missouri, and which we were requested to inspect and label by the complainant.

We deny that the act of the General Assembly of the State of Missouri, by its terms or provisions, authorizes or requires the inspection and labeling of packages containing beer not intended for sale and consumption in this State, or that defendants have ever so construed the act as to require the payment of an inspection fee upon beer shipped into this State and stored temporarily therein and in-

tended for reshipment into other States and for sale outside of the limits of this State.

We deny that said act of May 4th, 1899, is repugnant to section 8 of article 1 of the Constitution of the United States, or to section 2 of article IV of said Constitution, for the reasons stated in the fifth sub-division of paragraph 11 of said bill of complaint, or for any other reason, or that said act makes any discrimination against foreign manufactures of beer and malt liquors or imposes any improper restraint upon interstate commerce. We deny that the act by its terms requires the opening of the packages containing beer brought into this State, for the purpose of inspecting the same, or that these defendants have ever opened or attempted to open any of the packages containing such beer.

Twelfth. We deny that we have ever attempted to enforce the act of the General Assembly aforesaid other than by simply inspecting the beer submitted to us by complainant for the purpose of inspection under the terms of the said act. We admit that the principal place of business of the complainant is in the city of Milwaukee, in the State of Wisconsin, and that it owns a depot in Kansas City, Missouri; that it has no brewery in the State of Missouri, and that its business in this State consists solely in maintaining its
63 depot and selling its products shipped into this State.

Thirteenth. We do not know and cannot state of our own knowledge and belief the value of the property used by complainant in the conduct of its business in the State of Missouri, or the revenue and profit received therefrom. We deny that unless the relief prayed for in the bill is granted, any or all of said property will be rendered worthless or of no value, or that complainant's business will be destroyed or in any wise injured, or that its income or profits will be lost to it.

Fourteenth. We deny that the act of the General Assembly of the State of Missouri hereinbefore referred to requires the opening of complainant's packages containing its beer, or that defendants have ever at any time opened or attempted to open any of said packages for the purpose of inspecting the beer contained therein, but say that the affidavit referred to in said act is required by the terms thereof to be accepted in lieu of an inspection of the beer, and that defendants are only required to inspect and label the packages to which the affidavit applies. We deny that the act of the General Assembly of the State aforesaid interferes in any way with the legal rights of complainant, or that the complainant has the right to sell and dispose of intoxicating liquors in the State of Missouri without complying with the terms and provisions of said act. We deny that defendants or either of them, have instituted or caused to be instituted in the State of Missouri a large number of criminal prosecutions, or that they or either of them have instituted any criminal prosecutions for violation of said acts of the General Assembly, or that they have threatened to or are about to institute criminal prosecutions against complainant or any of its customers or other persons, and

we deny that the duty is devolved upon us by the terms of said act to institute such criminal prosecutions. We admit that a number of criminal prosecutions have been instituted in some of the counties of this State, and were pending at the time the original bill of complaint was filed in this cause, but that all of said prosecutions have been dismissed and that there are no prosecutions under said act now pending, so far as we know or have any information or belief, in any of the courts of this State.

We deny that the enforcement of the act will produce irreparable injury to the business of complainant, or that it is without adequate remedy at law, and we submit that we have the legal right to perform the duties devolving upon us under the terms of the act of the General Assembly set out in the bill of complaint, and that
64 complainant is not entitled to an injunction to restrain us from so doing, and defendants pray that said bill be dismissed, and that they have their reasonable costs in this behalf.

G. Y. CRENSHAW.
JNO. J. DOWNEY.

E. C. CROW,
W. M. WILLIAMS,
Solicitors for Defendants.

And afterwards to-wit: on the 14th day of March A. D., 1903 there was filed in the office of the clerk of the said circuit court, for the St. Joseph division of the western district of Missouri plaintiff's replication to defendants amended bill of complaint, in words and figures as follows:

In the Circuit Court of the United States for the State of Missouri, St. Joseph Division, Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

The Replication of Pabst Brewing Company to Defendants' Answer.

This replicant, saving and reserving to itself now and at all times hereinafter all and all manner of benefits and advantages of exception which may be had and taken to the manifold insufficiencies of said answer, for replication thereto say that it will aver, maintain and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto; and that said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by replicant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true all which

matters and things the replicant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

HARKLESS, O'GRADY & CRYSLER &
F. C. DOWNEY, *Solicitors for Complainant.*

65 And afterwards, to wit: on the 1st day of April A. D., 1903, there was filed in the office of the clerk of said circuit court an agreed statement of facts, in the above cause, which is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the State of Missouri, Western District, St. Joseph Division.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants. } In Equity.

Agreed Statement of Facts.

It is stipulated that this cause shall be submitted to the court upon this agreed statement of facts:

1st. That complainant is and was at the time of the institution of this suit a corporation duly created under the laws of the State of Wisconsin, and is and was at said times a citizen of said State, and that its principal place of business is in the city of Milwaukee, in said State of Wisconsin.

2nd. That defendant Crenshaw is a citizen of the State of Missouri, resident at the city of St. Louis, and defendant John J. Downey is a citizen of the State of Missouri, resident at St. Joseph, in said State, and within the St. Joseph division of the western district of said State.

3rd. That complainant was at the times mentioned in the bill, and still is, engaged in shipping into and selling in the State of
66 Missouri and other States, beer manufactured by it in the State of Wisconsin; that it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, each kind or grade being separately made or manufactured and requiring special treatment; that it annually transports into and sells in the State of Missouri fifteen thousand barrels of beer and other malt liquors, of thirty one gallons to the barrel, of the aggregate value of one hundred thousand dollars; that such shipments consist of every kind and grade of beer and other malt liquors so manufactured by it.

4th. That the General Assembly of the State of Missouri enacted a statute at the regular session of said assembly in the year 1899, in words and figures as follows, to-wit:

Inspection—Beer.

"An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate within thirty days after the taking effect of this act, and inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SECTION 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SECTION 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering the same for sale, shall cause the same to be inspected by said State inspector.

SECTION 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other
67 than those manufactured in this State, shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same; upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State.

SECTION 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewer or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SECTION 7. It shall be the duty of each inspector to cause to be inspected all beer or other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing said beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SECTION 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labelling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking his receipt therefor, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SECTION 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof, except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SECTION 8. The inspector shall be entitled to receive for inspection and gauging one cent for each gallon contained in each package, and two cents for labeling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles,

for inspection and stamping by said State inspector; and
68 when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SECTION 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under this act shall, on or before the last day of each month, be paid into the State treasury by said inspector, and shall be placed to the credit of the general revenue fund.

SECTION 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SECTION 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SECTION 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and the prosecution begun.

SECTION 13. All beer and other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SECTION 13*a*. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SECTION 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing, and such other things as may be necessary for the
69 transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4, 1899.

That said act was on the 4th day of May, 1899, approved by the governor of said State, and thereafter published in the manner provided by law for the approval and publication of the acts of the said General Assembly.

5th. That at the regular session of the General Assembly of the State of Missouri in the year 1901, an amendment to the eighth section of said act above copied was enacted by the legislature of the State of Missouri, and which said amendatory act is in words and figures as follows, to-wit:

"An act to amend section 7691 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor.

SECTION 8. "The inspector shall be entitled to receive for inspecting and gauging one-half a cent for each gallon contained in each package, and one cent for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean eight gallons or fractional part thereof so contained in said vessel."

That the same was duly approved by the governor of the
70 State of Missouri and promulgated as a statute of said State on the 16th day of April, 1901.

6th. That defendant Crenshaw was appointed by the governor of the State of Missouri inspector of beer and malt liquors under the provisions of said act, and defendant John J. Downey was appointed by said Crenshaw, with the approval of the governor of the State of Missouri, deputy inspector of beer and malt liquors of the State of Missouri; that defendants duly qualified as required by the terms of said act and the constitution of the State, and that at the time this suit was instituted, and long prior thereto, they claimed to be entitled to act as such beer inspector and deputy beer inspector, and to be entitled to discharge the duties of their respective offices, and claimed then and still claim to be authorized and entitled to enforce and effectuate the provisions of the acts of the legislature above copied, and that they have announced and stated their intention of enforcing the provisions of said act, and are enforcing the same and threaten to continue enforcing the provisions thereof against the complainant and all other persons coming within its terms, so far as the enforcement thereof devolves upon them as beer inspector and deputy beer inspector.

7th. That the American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Company, Louis Ebert, the St. Louis Brewing Association, the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Lester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Western Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig are engaged in the manufacture and sale of beer in the State of Missouri; that
71 they manufacture annually within the State of Missouri approximately 2,250,000 barrels of beer, of 31 gallons each, of the aggregate value of $12,250,000, of which *they* amount they sell in the State of Missouri approximately 1,275,000 barrels, of 31 gallons each, of the aggregate value of about $6,375,000.

8th. That in addition to the complainant and the persons, firms and corporations just named, there are other persons, firms and corporations engaged in the manufacture of beer in other States, including the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer manufactured in said other States, not less than 165,000 barrels, of 31 gallons each, of the aggregate value of $10,725,000, and that there are large quantities of ale shipped into the *the* State of Missouri from other States in the Union. That there is also imported into the State of Missouri, by various persons, firms and corporations engaged in the sale of beer, large quantities of beer manufactured in foreign countries, and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported

from such foreign countries and sold in this State, amounts annually to 1500 barrels, or 31 gallons each, of the aggregate value of $10,000.

9th. That beer, whatever cereals may be used in its manufacture, must for the purposes of sale and consumption be enclosed in tight packages of glass or wood, and when so prepared for sale by inclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so effects the beer as to render it stale, flat, unpalatable and sour, and a complete loss.

10th. That the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is $5.00 per barrel, of 31 gallons, and the average price for beer, of like capacity, manufactured out of and imported into the
72 State of Missouri for sale is $6.50.

11th. That of the beer manufactured in the State of Missouri there is exported annually from said State not less than 975,000 barrels, of 31 gallons each, of the aggregate value of about $4,875,000; that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries there is exported from this State, in the original and unbroken packages, approximately 400,000 barrels, of 31 gallons each, of the aggregate value of $2,600,000.

12th. That the entire expenditures authorized on account of the actual inspection, as provided by the act itself, amounts to $12,500, and it is admitted for the purpose of this case that the inspection fees provided by the act annually collected upon beer sold in the State of Missouri amount to $350,000, and that this is at least $337,500 in excess of the cost to the State for inspection.

13th. That the fees chargeable under said act upon beer and malt liquors manufactured out of and brought into this State from other States and from foreign countries, for sale in the State of Missouri, exceed the total authorized cost to the State of the inspection approximately $60,000 a year.

14th. That complainant is authorized by general license to carry on business in the State of Missouri, and that its business in said State consists solely of shipping into said State, for the purpose of selling therein or re-shipping therefrom the product of its manufactory in the State of Wisconsin; that in the usual course of its business in such commerce it is compelled and does maintain large warehouses and storerooms in the State of Missouri, and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its business and commerce.

15th. That of the beer brought annually into the State of Missouri by complainant, about 7500 barrels, of 31 gallons each, of the aggregate value of $50,000, is intended to be shipped into other
73 States; and is sold and reshipped into other States; that in due course such beer is unloaded from the cars in which it

has been brought into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was shipped in the store houses and warerooms of the complainant in the State of Missouri; that sales are thereafter made in the unbroken and original packages in the State of Missouri to persons resident without and non-citizens of said State, for shipment by complainant therefrom, and for delivery in such original packages to the purchasers thereof at agreed points in other States and countries; that such beer when so sold is thereafter shipped from the State of Missouri and no part or portion thereof is consumed within said State; but the beer so shipped into the State of Missouri and sold therein and transported therefrom to other States has never been inspected by the defendants, nor have they *they* ever demanded the right to inspect the same, nor do they now claim the right to do so, nor has the complainant paid or been called upon to pay any inspection fees upon the beer referred to in this paragraph, nor are the defendants threatening or offering to inspect said beer, or to collect any inspection fees therefor. Said defendants are only claiming the right to inspect beer sold in the State of Missouri for consumption therein, and they have only inspected of complainant's beer such as has been exhibited to them for that purpose and intended for sale and consumption in this State.

16th. That to procure the affidavit and certificate of the officer required by the 5th section of the bill above copied, the complainant is compelled to and does expend the sum of fifty cents for each affidavit, that the shipments of beer and malt liquors made by complainant into the State of Missouri average two thousand annually, and to furnish the requisite affidavits costs it annually $1,000.

17th. That defendants have never opened any of the packages containing beer shipped into said State by complainant, or by any other person engaged in the sale of beer in the State of Missouri,
74 but have accepted the affidavit mentioned in the act as a sufficient statement of the ingredients from which the beer was manufactured, and that they have always construed the act to require that the shipper of beer into this State which is manufactured in another State, to present the affidavit referred to in the act to them, and for them to inspect the package to which the affidavit related so as to see that the affidavit refers to such package, and then to label the same, and that they have never opened or attempted to open any package of beer.

18th. That complainant is duly licensed by the State of Missouri to engage in the sale of beer within this State.

19th. That defendants have inspected the beer shipped into the State of Missouri by the complainant for sale for consumption in said State, and have collected from the complainant the inspection fees therefor, but have never inspected any other beer of the complainant; nor collected any fees upon beer not offered for sale for consumption in Missouri; that the fees paid by complainant for the

inspection of beer sold for inspection in the State of Missouri by it since the act went into effect have aggregated about $10,000.

20th. That complainant has no brewery, plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri consists solely in its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes said beer from its depots and delivers it in the original packages to its consumers; that none of the products sold by complainant is manufactured or brewed in the State of Missouri, but is manufactured in the State of Wisconsin, and is there put into kegs, barrels and bottles. When thus put up it is shipped to and stored in complainant's depot at Kansas city, and is thereafter removed from such depot and delivered to complainant's customers in the original package; that its depot at Kansas City is necessary for the proper conduct of its business, and is only used as a place for storage and for no other purpose, and that it has con-
75 ducted its business in this manner for many years and desires and intends so to do in the future.

21st. That complainant owns and maintains large warehouses and storehouses, specially constructed in Kansas City, which would be of little or no value for any other business, but all of which is of great value for the purposes now used, to-wit: of the value of $50,000; that it owns and uses a large number of horses and wagons, and other property, of the value of, to-wit: $100,000, and has built up and enjoys a large and well established trade and business from its depot and agency in Kansas City, which yields it annually about $20,000.

22nd. That a number of criminal prosecutions were instituted in the State of Missouri for violations of said act, but that none of said prosecutions were instituted by defendants, or by their direction or at their request, and that all of said prosecutions have since been dismissed, and that there are now no prosecutions for a violation of said act pending in any of the courts of the State of Missouri; that defendants are carrying out and intend to carry out the provisions of said act as far as they are required, as said beer and deputy beer inspector, to do by the terms and provisions of said statute, and not otherwise.

HARKLESS, O'GRADY & CRYSLER &
FRANCIS M. DOWNEY,
Solicitors for Complainant.
E. C. CROW, *Att'y Gen'l.*
W. M. WILLIAMS, *For Defendants.*

76 And afterwards on the same date, to wit, April 1st, 1903, a decree was filed and entered of record in said cause, and which said decree is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

THE PABST BREWING COMPANY, a Corporation, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Decree.

This cause having been submitted to the court upon the pleadings and the following agreed statement of facts:

"It is stipulated that this cause shall be submitted to the court upon this agreed statement of facts:

1st. That complainant is and was at the time of the institution of this suit a corporation duly created under the laws of the State of Wisconsin, and is and was at said times a citizen of said State, and that its principal place of business is in the city of Milwaukee, in said State of Wisconsin.

2nd. That defendant Crenshaw is a citizen of the State of Missouri, resident at the city of St. Louis, and the defendant John J. Downey is a citizen of the State of Missouri, resident at St. Joseph, in said State, and within the St. Joseph division of the western district of said State.

3rd. That complainant was at the times mentioned in the bill, and still is, engaged in shipping into and selling in the State
77 of Missouri and other States, beer manufactured by it in the State of Wisconsin; that it manufactures in the State of Wisconsin ten different kinds or grades of beer and malt liquors, each kind or grade being separately made or manufactured and requiring special treatment; that it annually transports into and sells in the State of Missouri fifteen thousand barrels of beer and other malt liquors, of thirty-one gallons to the barrel, of the aggregate value of one hundred thousand dollars; that such shipments consist of every kind and grade of beer and other malt liquors so manufactured by it.

4th. That the General Assembly of the State of Missouri enacted a statute at the regular session of said assembly in the year 1899, in words and figures as follows, to-wit:

Inspection—Beer.

"An act creating the office of inspector of beer and malt liquors of the State, and providing for the inspection of beer and malt liquors manufactured and sold in this State.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"SECTION 1. There is hereby created the office of beer inspector which shall be filled by appointment by the governor by and with the consent of the senate within thirty days after the taking effect of this act, and inspector of beer and malt products, who shall serve for a term of four years and until his successor is duly appointed and qualified. He shall be an expert beer brewer and a citizen of the United States and of this State for more than two years next prior to his appointment. He shall give a bond in the sum of twenty-five thousand dollars, to be approved by the governor, for the faithful performance of the duties of his office.

SECTION 2. Said inspector shall, with the approval of the governor, appoint such deputies as may be required to carry out the provisions of this act, not to exceed four in number, and such clerical help as may be necessary. Said deputies shall each receive for their services the sum of fifteen hundred dollars per annum, all salaries and expenses to be paid out of the sums of money now, or that may hereafter be, appropriated for said purpose.

SECTION 3. Every person, persons or corporation who shall erect or keep a brewery for the manufacture or brewing of beer or other malt products within this State, for the purpose of offering the same for sale, shall cause the same to be inspected by said State inspector.

SECTION 4. No person, persons or corporation, engaged in the brewing or manufacture of beer or other malt liquors, shall use any substance, material or chemical in the manufacture or brewing of beer or other malt liquors, other than pure hops or pure extract of hops, or pure barley, malt or wholesome yeast, or rice.

SEC. 5. Every person, persons or corporation who shall receive for sale or offer for sale any beer or other malt liquors other
78 than those manufactured in this State, shall, upon receipt of same, and before offering for sale, notify the inspector, who shall be furnished with a sworn affidavit, subscribed by an officer authorized to administer oaths, from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or other malt liquors, that no material other than pure hops, or the extract of hops, or pure barley, malt or wholesome yeast, or rice, was used in the manufacture of the same; upon receipt of said affidavit, the inspector shall inspect and label the packages containing said beer or malt liquors, for which services he shall receive like fees as those imposed upon the manufacturers of beer and malt liquors in this State.

SECTION 6. The inspector appointed under this act shall provide himself with an office, and shall record on books kept for that purpose the names and places of business of all persons engaged in the manufacture, brewing and sale of beer and malt liquors. He shall keep a record of all beer and malt liquors manufactured, brewed or sold and the amount produced by each brewer or manufacturer, or sold by dealer. He shall keep a record of all fees collected and all expenditures incurred, and shall make a full and complete report of the same to the governor upon the first day of each year.

SECTION 7. It shall be the duty of each inspector to cause to be inspected all beer and other malt liquors brewed or manufactured or sold in this State, and if he shall find that such beer or other malt liquor has been made from pure hops or the pure extract of hops, or of pure barley, malt or wholesome yeast, or rice, to place upon the package containing said beer or malt liquor his label, certifying that the same has been inspected and made from wholesome ingredients.

SECTION 7*a*. It shall be the duty of the State treasurer upon the taking effect of this act to provide suitable and inimitable State certificates and labels for this inspection, gauging and labelling, having on each proper places for countersigning by the State treasurer and inspector, and shall safely keep the same together with the plates used in making them, when not in actual use. The State treasurer shall from time to time, upon demand, deliver the aforesaid labels to the inspector, taking his receipt therefor, and shall charge said inspector with the same; and shall from time to time as said inspector makes returns of moneys collected in the course of his inspection credit said inspector's account with such sums, and shall keep a true and correct book account of his dealings with said inspector.

SECTION 7*b*. It shall be unlawful for any person to attempt to make or make, to attempt to sell or sell, or attempt to use or use any of the certificates or labels or both provided for by this act, or imitations thereof, except such persons as by law are allowed to make, sell and use the same, and any person so offending shall be deemed guilty of a felony, and, upon conviction, be punished by imprisonment in the penitentiary for a term not to exceed five years.

SECTION 8. The inspector shall be entitled to receive for inspection and gauging one cent for each gallon contained in each package, and two cents for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word package, as used in this act, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale, containing eight gallons or less; when said beer or malt liquors are placed in pint or quart bottles, a package, as used in this act, shall be construed to mean not to exceed forty-eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles,

for inspection and stamping by said State inspector; and
79 when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean each eight gallons or fractional part thereof so contained in said vessel.

SECTION 9. The expense of said office, including the salaries of the inspector and his deputies, shall be paid monthly out of the amount appropriated by law from the general revenue fund on warrants drawn by the State auditor on vouchers approved by the inspector, and all fees received by the inspector under this act shall, on or before the last day of each month, be paid into the State treasury by said inspector, and shall be placed to the credit of the general revenue fund.

SECTION 10. Any person who shall sell any beer or malt liquor within this State which has not been inspected according to the provisions of this act, or contained in packages which shall not have upon them the certificate of the State inspector, or any person — shall fail to destroy said certificate or label after the contents of said package are disposed of, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period of not less than six months, and in addition thereto shall have his license or other authority, giving him the right to manufacture or sell said liquors in this State revoked, and shall not again receive any such license or other authority for a period of two years thereafter.

SECTION 11. If any inspector shall fail to perform any of the duties imposed upon him by this act, or shall in any manner violate any of the provisions thereof, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days and by a fine not exceeding one thousand dollars, and if any said inspector shall fail to faithfully perform the duties enjoined upon him by this act he may be removed from office by the governor.

SECTION 12. All prosecutions for fines and penalties under the provisions of this act shall be either by indictment or information in any court of competent jurisdiction, and when collected shall be paid one-fourth to the informer and three-fourths into the fund for the construction of public roads and highways in the county in which said offense may have been committed and the prosecution begun.

SECTION 13. All beer and other malt liquors manufactured in this State and exported outside of the State for sale, shall be inspected as other liquors designated in this act, but said inspection shall be free of cost to the manufacturer.

SECTION 13a. Every railroad, express or transportation company, shall when requested, furnish to the inspector a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of beer or malt liquors received by them for shipment to any point within this State. Upon

failure to comply with the provisions herein, said railroad, express or transportation company shall forfeit and pay to the State of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The inspector herein provided for, is hereby authorized and empowered to sue in his own name at the relation and to the use of the State. The penalties collected shall be paid into the State treasury.

SECTION 14. There is hereby appropriated out of the State treasury, chargeable to the general revenue fund, for the years 1899 and 1900, for the pay of the inspector, six thousand dollars; for the pay of four deputies, twelve thousand dollars; for rent, stationery, fuel, printing, and such other things as may be necessary for the
80 transaction of the business of said inspector, the sum of six thousand dollars.

Approved May 4, 1899.

That said act was on the 4th day of May, 1899, approved by the governor of said State, and thereafter published in the manner provided by law for the approval and publication of the acts of the said General Assembly.

5th. That at the regular session of the General Assembly of the State of Missouri in the year 1901, an amendment to the eighth section of said act above copied was enacted by the legislature of the State of Missouri, and which said amendatory act is in words and figures as follows, to-wit:

"An act to amend section 7691 of article IV of chapter 117 of the Revised Statutes of 1899, entitled "Inspection of beer," and to fix the fees to be paid therefor.

SECTION 8. "The inspector shall be entitled to receive for inspecting and guaging one-half a cent for each gallon contained in each package, and one cent for labelling each package. All fees received by the inspector shall be paid into the State treasury. The word "package," as used in this article, shall be construed to mean any vessel of any kind other than pint and quart bottles in which any beer or malt liquor may be placed for sale containing eight gallons or less; when said beer or malt are placed in pint or quart bottles, a package, as used in this article, shall be construed to mean not to exceed forty eight pint bottles or 24 quart bottles of beer or malt liquors, which, when manufactured and so bottled must, before sale, be placed in suitable cases containing said number and size of bottles for stamping by said State inspector; and when said beer or malt liquors shall be placed in vessels containing more than eight gallons, the word package shall be construed to mean eight gallons or fractional part thereof so contained in said vessel."

That the same was duly approved by the governor of the
81 State of Missouri and promulgated as a statute of said State on the 16th day of April, 1901.

6th. That defendant Crenshaw was appointed by the governor of the State of Missouri inspector of beer and malt liquors under the provisions of said act, and defendant John J. Downey was appointed by said Crenshaw, with the approval of the governor of the State of Missouri, deputy inspector of beer and malt liquors of the State of Missouri; that defendants duly qualified as required by the terms of said act and the constitution of the State, and that at the time this suit was instituted, and long prior thereto, they claimed to be entitled to act as such beer inspector and deputy beer inspector, and to be entitled to discharge the duties of their respective offices, and claimed then and still claim to be authorized and entitled to enforce and effectuate the provisions of the acts of the legislature above copied, and that they have announced and stated their intention of enforcing the provisions of said act, and are enforcing the same and threaten to continue enforcing the provisions thereof against the complainant and all other persons coming within its terms, so far as the enforcement thereof devolves upon them as beer inspector and deputy beer inspector.

7th. That the American Brewing Company, the Consumers Brewing Company, the Home Brewing Company, Anheuser-Busch Brewing Company, Louis Ebert, the St. Louis Brewing Association, the Wm. J. Lemp Brewing Company, the Ferdinand Heim Brewing Company, Rochester Brewing Company, G. Muehlebach Brewing Company, Jacob Moerschel, Charles Schibi, the Ste. Genevieve Brewing & Lighting Association, the M. K. Goetz Brewing Company, John Lester, the St. Joseph Brewing Company, the Moerschel Brewing Company, the Springfield Brewing Company, John B. Busch, the Western Brewing Company, the Cape Brewing & Ice Company, Herl-Redlin Brewing Company, Elizabeth Reidel, Hugo Kropp, the Capital Brewing Company and Caspar Ludwig are engaged in the manufacture and sale of beer in the State of Missouri; that
82 they manufacture annually within the State of Missouri approximately 2,250,000 barrels of beer, of 31 gallons each, of the aggregate value of $12,250,000, of which *they* amount they sell in the State of Missouri approximately 1,275,000 barrels, of 31 gallons each, of the aggregate value of about $6,375,000.

8th. That in addition to the complainant and the persons, firms and corporations just named, there are other persons, firms and corporations engaged in the manufacture of beer in other States, including the States of Illinois and Wisconsin, who annually ship into and sell in the State of Missouri, of the beer manufactured in said other States, not less than 165,000 barrels, of 31 gallons each, of the aggregate value of $10,725,000, and that there are large quantities of ale shipped into the *the* State of Missouri from other States in the Union. That there is also imported into the State of Missouri, by various persons, firms and corporations engaged in the sale of beer, large quantities of beer manufactured in foreign countries, and especially beer from Germany and ale from England, and that the aggregate of such additional shipments of beer and ale imported

from such foreign countries and sold in this State, amounts annually to 1500 barrels, or 31 gallons each, of the aggregate value of $10,000.

9th. That beer, whatever cereals may be used in its manufacture, must for the purposes of sale and consumption be enclosed in tight packages of glass or wood, and when so prepared for sale by inclosure in such tight packages, the packages thereafter cannot be opened without injury to the contents; that such packages are never opened except for the purposes of immediate consumption; that to open the same otherwise than for the immediate consumption of the contents so effects the beer as to render it stale, flat, unpalatable and sour, and a complete loss.

10th. That the average price of beer manufactured and sold in the State of Missouri, exclusive of the United States revenue stamps, is $5.00 per barrel, of 31 gallons, and the average price for beer, of like capacity, manufactured out of and imported into the
83 State of Missouri for sale is $6.50.

11th. That of the beer manufactured in the State of Missouri there is exported annually from said State not less than 975,000 barrels, of 31 gallons each, of the aggregate value of about $4,875,000; that of the beer and malt liquors manufactured out of and imported into this State from other States and foreign countries there is exported from this State, in the original and unbroken packages, approximately 400,000 barrels, of 31 gallons each, of the aggregate value of $2,600,000.

12th. That the entire expenditures authorized on account of the actual inspection, as provided by the act itself, amounts to $12,500, and it is admitted for the purpose of this case that the inspection fees provided by the act annually collected upon beer sold in the State of Missouri amount to $350,000, and that this is at least $337,500 in excess of the cost to the State for inspection.

13th. That the fees chargeable under said act upon beer and malt liquors manufactured out of and brought into this State from other States and from foreign countries, for sale in the State of Missouri, exceed the total authorized cost to the State of the inspection approximately $60,000 a year.

14th. That complainant is authorized by general license to carry on business in the State of Missouri, and that its business in said State consists solely of shipping into said State, for the purpose of selling therein or re-shipping therefrom the product of its manufactory in the State of Wisconsin; that in the usual course of its business in such commerce it is compelled and does maintain large warehouses and storerooms in the State of Missouri, and is compelled to and does maintain an office therein as a necessary adjunct to the proper and economical conduct of its business and commerce.

15th. That of the beer brought annually into the State of Missouri by complainant, about 7500 barrels, of 31 gallons each, of the aggregate value of $50,000, is intended to be shipped into other
84 States; and is sold and reshipped into other States; that in due course such beer is unloaded from the cars in which it

has been brought into the State of Missouri and is stored in unbroken bulk and in the original packages in which the same was shipped in the store houses and warerooms of the complainant in the State of Missouri; that sales are thereafter made in the unbroken and original packages in the State of Missouri to persons resident without and non-citizens of said State, for shipment by complainant therefrom, and for delivery in such original packages to the purchasers thereof at agreed points in other States and countries; that such beer when so sold is thereafter shipped from the State of Missouri and no part or portion thereof is consumed within said State; but the beer so shipped into the State of Missouri and sold therein and transported therefrom to other States has never been inspected by the defendants, nor have they *they* ever demanded the right to inspect the same, nor do they now claim the right to do so, nor has the complainant paid or been called upon to pay any inspection fees upon the beer referred to in this paragraph, nor are the defendants threatening or offering to inspect said beer, or to collect any inspection fees therefor. Said defendants are only claiming the right to inspect beer sold in the State of Missouri for consumption therein, and they have only inspected of complainant's beer such as has been exhibited to them for that purpose and intended for sale and consumption in this State.

16th. That to procure the affidavit and certificate of the officer required by the 5th section of the bill above copied, the complainant is compelled to and does expend the sum of fifty cents for each affidavit, that the shipments of beer and malt liquors made by complainant into the State of Missouri average two thousand annually, and to furnish the requisite affidavits costs it annually $1,000.

17th. That defendants have never opened any of the packages containing beer shipped into said State by complainant, or by any other person engaged in the sale of beer in the State of Missouri,
but have accepted the affidavit mentioned in the act as a
85 sufficient statement of the ingredients from which the beer
was manufactured, and that they have always construed the act to require that the shipper of beer into this State which is manufactured in another State, to present the affidavit referred to in the act to them, and for them to inspect the package to which the affidavit related so as to see that the affidavit refers to such package, and then to label the same, and that they have never opened or attempted to open any package of beer.

18th. That complainant is duly licensed by the State of Missouri to engage in the sale of beer within this State.

19th. That defendants have inspected the beer shipped into the State of Missouri by the complainant for sale for consumption in said State, and have collected from the complainant the inspection fees therefor, but have never inspected any other beer of the complainant; nor collected any fees upon beer not offered for sale for consumption in Missouri; that the fees paid by complainant for the

inspection of beer sold for inspection in the State of Missouri by it since the act went into effect have aggregated about $10,000.

20th. That complainant has no brewery, plant or manufactory for the brewing or manufacture of beer or other malt liquors in the State of Missouri; that its business as conducted and maintained in the State of Missouri consists solely in its maintaining the depot in which it stores the product of its brewery, and in due course of its business it removes said beer from its depots and delivers it in the original packages to its consumers; that none of the products sold by complainant is manufactured or brewed in the State of Missouri, but is manufactured in the State of Wisconsin, and is there put into kegs, barrels and bottles. When thus put up it is shipped to and stored in complainant's depot at Kansas City, and is thereafter removed from such depot and delivered to complainant's customers in the original package; that its depot at Kansas City is necessary for the proper conduct of its business, and is only used as a place for storage and for no other purpose, and that it has con-
86 ducted its business in this manner for many years and desires and intends so to do in the future.

21st. That complainant owns and maintains large warehouses and storehouses, specially constructed in Kansas City, which would be of little or no value for any other business, but all of which is of great value for the purposes now used, to-wit: of the value of $50,000; that it owns and uses a large number of horses and wagons, and other property, of the value of, to-wit: $100,000, and has built up and enjoys a large and well established trade and business from its depot and agency in Kansas City, which yields annually about $20,000.

22nd. That a number of criminal prosecutions were instituted in the State of Missouri for violations of said act, but that none of said prosecutions were instituted by defendants, or by their direction or at their request, and that all of said prosecutions have since been dismissed, and that there are now no prosecutions for a violation of said act pending in any of the courts of the State of Missouri; that defendants are carrying out and intend to carry out the provisions of said act as far as they are required, as said beer and deputy beer inspector, to do by the terms and provisions of said statute, and not otherwise.

HARKLESS, O'GRADY & CRYSLER &
FRANCIS M. DOWNEY,
Solicitors for Complainant.
E. C. CROW, *Att'y Gen'l,*
W. M. WILLIAMS, *For Defendants.*

And the court being fully advised in the premises, declares the law to be that the complainant is not entitled to the injunction and relief prayed for.

It is, therefore, ordered and decreed that the bill of complaint herein be, and the same is hereby, dismissed, at the complainant's

cost, to be taxed by the clerk of this court, and that unless paid within 20 days herefrom that the defendants have execution therefor.

JOHN F. PHILIPS, *Judge.*

87 And afterwards to-wit: on the 25th day of May A. D., 1903, there was filed with the clerk of said circuit court by complainant's solicitors an assignment of errors, which assignment of errors is in words and figures as follows to-wit:

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Missouri, Sitting at the City of St. Joseph, Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Assignment of Errors.

The complainant, The Pabst Brewing Company assigns for error herein

I.

That the court erred in dismissing the complainant's bill and rendering judgment for the defendants.

II.

The court erred in that under the agreed statement of the facts the findings should have been for the complainant instead of the defendants.

JAMES H. HARKLESS,
JOHN O'GRADY,
CHAS. S. CRYSLER, &
FRANCIS C. DOWNEY,
Attorneys for Complainant.

And afterwards to-wit on the same date, there was filed with said clerk of said circuit court complainant's petition for allowance of appeal, and which petition is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

88 & 89 PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Petition for Allowance of Appeal.

The above named complainant, Pabst Brewing Company, conceiving itself to be aggrieved by the order and decree made and entered in the above entitled cause on the first day of April A. D., 1903, wherein and whereby said complainant's bill of complaint was dismissed by the court and final judgment rendered against it, does hereby appeal from said order and decree of April 1st 1903, to the Supreme Court of the United States, for the reasons specified in the assignment or errors filed herein; and it prays that this appeal may be allowed and that a transcript of the record, agreed statement of facts and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

JAMES H. HARKLESS,
JOHN O'GRADY, &
CHAS. S. CRYSLER,
Solicitors for Complainant.

And afterwards to-wit: on the same date, the following order allowing appeal was made and entered on the journal of said court, in words and figures as follows:

In the Circuit Court of the United States for the St. Joseph Division of the Western District of Missouri.

PABST BREWING COMPANY, Complainant,
vs.
G. Y. CRENSHAW and JOHN J. DOWNEY, Defendants.

Order Allowing Appeal.

The above named complainant, Pabst Brewing Company, having duly filed its assignment of errors and petition for appeal, on
90 motion of Harkless, O'Grady & Crysler and Francis C. Downey, solicitors for complainant, it is ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore filed and entered herein on the 1st day of April A. D., 1903, be and the same is hereby allowed and that a certified transcript of

the record, agreed statement of facts and all proceedings herein, be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond for costs and damages on appeal be fixed at the sum of five hundred dollars.

Dated this 25th day of May A. D., 1903.

JOHN F. PHILIPS, *Judge.*

And afterwards to wit, on the same date (May 25th, 1903) there was filed with the clerk of said court, a bond for costs and damages on appeal, in words and figures as follows:

UNITED STATES OF AMERICA, *set:*

Know all men by these presents, that we, Pabst Brewing Company as principal and E. F. Swinney and H. T. Abernathy as sureties, are held and firmly bound unto G. Y. Crenshaw and John J. Downey, in the full and just sum of five hundred no/100 dollars ($500.00) to be paid to the said G. Y. Crenshaw and John J. Downey, their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 19th day of May, in the year of our Lord, one thousand nine hundred and three.

Whereas, lately at the March term of the circuit court of the United States for the St. Joseph division of the western district of Missouri, in a suit depending in said court between Pabst Brewing Company, complainant and G. Y. Crenshaw and John J. Downey defendants, a decree dismissing complainant's bill of complaint was rendered against the said Pabst Brewing Company and the said Pabst Brewing Company has obtained an order of appeal of the said court to reverse the decree in the aforesaid suit, and a citation 90½ directed to the said G. Y. Crenshaw, and John J. Downey, citing and admonishing them to be and appear in the Supreme Court of the United States, sixty days from and after said citation.

Now, the condition of the above obligation is such, that if the said Pabst Brewing Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

PABST BREWING COMPANY,
By JAS. H. HARKLESS, [SEAL.]
Agent & Attorney.
E. F. SWINNEY, [SEAL.]
H. T. ABERNATHY. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

JOHN PHILLIPS, *Judge.*

91 UNITED STATES OF AMERICA, *ss:*

To G. Y. Crenshaw and John J. Downey, defendants, and to Edwin C. Crow, att'y general of Missouri, and W. M. Williams, solicitors for defendants, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington D. C. thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein The Pabst Brewing Company is complainant and G. Y. Crenshaw and John J. Downey are defendants, to show cause, if any there be, why the judgment rendered against the said complainant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John F. Phillips judge of the circuit court of the United States for the western division of the western district of Missouri, this 3rd day of July in the year of our Lord one thousand nine hundred and three.

JNO. F. PHILIPS, *Judge.*

92 UNITED STATES OF AMERICA, } *ss:*
Western Division of the Western District of Missouri, }

We hereby acknowledge due service of the within citation this 6th day of July A. D. 1903.

E. C. CROW, *Att'y Gen'l,*
W. M. WILLIAMS,
Attorney for Defendant in Error.

93 UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

I, Calvin C. Colt, clerk of the circuit court of the United States, for the Saint Joseph division of the western district of Missouri, hereby certify that the above and foregoing is a full true and complete transcript of the record, agreed statement of facts and all proceedings had and entered of record in the cause of Pabst Brewing Co. *vs.* G. Y. Crenshaw and John J. Downey, as fully as the same are on file and entered on the journal of said court, and that the original citation in said cause with acknowledgment of service therein is hereto attached.

In witness whereof, I have this 27th day of June A. D. 1903, at the city of St. Joseph, Missouri set my hand as clerk and affixed the seal of said court.

[Seal U. S. Circuit Court, St. Joseph Div., Western Dist. Mo.]

CALVIN C. COLT, *Clerk.*

[Endorsed:] Transcript Pabst Brewing Company, a corporation, vs. G. Y. Crenshaw and John J. Downey. From St. Joseph division of the western district of Missouri. United States circuit court.

Endorsed on cover: File No. 19,009. W. Missouri C. C. U. S. Term No. 358. Pabst Brewing Company, appellant, vs. G. Y. Crenshaw and John J. Downey. Filed July 14th, 1903.